SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, ~~1964~~ 1965

No. ~~632~~ 16

SGT. JESSE E. SNAPP, PETITIONER,

vs.

HONORABLE W. D. NEAL, STATE AUDITOR, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI

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[fol. 1] [Caption omitted]

[fol. 2]

IN THE CHANCERY COURT OF COPIAH COUNTY, MISSISSIPPI

In Vacation 1963.

No. 15,670

SGT. JESSE E. SNAPP, Petitioner,

vs.

HONORABLE W. D. NEAL, State Auditor of Public Accounts, State of Mississippi, and HONORABLE JOE T. PATTERSON, Attorney General of the State of Mississippi, Defendants.

(Appeal by Complainant, Sgt. Jesse E. Snapp, from "FINAL DECREE" of August 13, 1963.)

APPEARANCES:

Hon. Jack McDill, Assistant to Robert E. Hauberg, United States Attorney, Southern District of Mississippi, Jackson, Mississippi, Present and Representing the Complainant * (Appellant)

Hon. Martin R. McLendon, Assistant Attorney General of the State of Mississippi, Jackson, Mississippi, Present and Representing the Defendants (Appellees).

[fol. 3]

IN THE CHANCERY COURT OF COPIAH COUNTY, MISSISSIPPI

JULY, 1963, TERM

Number 15,670

[Title omitted]

PETITION FOR APPEAL AND REVIEW—Filed June 26, 1963

To the Honorable Chancellor of the Chancery Court in and for Copiah County, Mississippi:

Comes now Sgt. Jesse E. Snapp, petitioner, and files his petition for appeal and review under Section 9979, Mississippi Code of 1942, Recompiled, as amended, from the decision of Honorable W. D. Neal, State Auditor of Public Accounts and Honorable Joe T. Patterson, Attorney General of the State of Mississippi, defendants, rendered April 4, 1963, denying the application of petitioner for refund of taxes paid by petitioner on his house trailer; and in support of this petition, petitioner respectfully represents:

1. Petitioner attaches hereto a cost bond in the sum of $500.00 conditioned to pay all costs which may be assessed against him in this case.

2. On December 28, 1962, petitioner was required by the Sheriff of Copiah County, Mississippi, to pay the sum of $38.50 as a tax on petitioner's house trailer under Chapter 535 of the Laws of 1962 of the State of Mississippi. The aforesaid sum was paid under protest by petitioner and he alone bore the burden of this payment and did not directly or indirectly collect the tax from any other person.

[fol. 4] 3. On February 6, 1963, petitioner filed an application for refund of the taxes paid with the State Auditor of Public Accounts and submitted affidavits and other evidence in support of his application. Petitioner based his application for refund on the ground, among others, that assessment and collection of taxes was and is forbidden by the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, particularly Section 574 of Title 50, Appendix,

United States Code. Petitioner is advised and believes that the State Auditor of Public Accounts has the entire record of Petitioner's claim in the files in his office.

4. Under date of April 5, 1963, the State Auditor of Public Accounts denied the application of Sgt. Snapp for a refund and attached to his notification an opinion of the Attorney General of the State of Mississippi rendered April 4, 1963, wherein the Attorney General disapproved petitioner's application for refund.

Wherefore, petitioner being aggrieved at the disapproval and denial of his application for refund prays that the Clerk of this Court will approve and file the bond attached hereto and will give notice to Honorable Joe T. Patterson, Attorney General of the State of Mississippi and Honorable W. D. Neal, State Auditor of Public Accounts, as required by law, of the filing of this petition; and,

Petitioner further prays that this Honorable Court will cause the said Auditor to promptly transmit to this Court a certified copy of the entire record of the claim of petitioner for refund and that this cause will be docketed for trial upon such record; and,

Petitioner prays that upon appeal and review of the record and upon a hearing of this petition this Honorable Court will direct the State Auditor of Public Accounts to [fol. 5] pay unto petitioner the sum of $38.50 for the house trailer taxes illegally and unlawfully assessed and collected and will absolve petitioner from necessity for the payment of court costs and direct that the cost bond filed in this action be cancelled and the principal and sureties thereon discharged; and,

Your petitioner prays for such other relief, either general or special, which the Court deems meet; and,

As in duty bound petitioner will ever pray.

Sgt. Jesse E. Snapp, Petitioner.

Duly sworn to by Sgt. Jesse E. Snapp, jurat omitted in printing.

[File endorsement omitted]

[fol. 8] [File endorsement omitted]

IN THE CHANCERY COURT OF COPIAH COUNTY, MISSISSIPPI

Number 15,670

[Title omitted]

ORDER FOR TRANSMITTAL OF CERTIFIED COPY OF ENTIRE RECORD—June 28, 1963

This day came on to be considered the prayer of the petitioner that this court cause the State Auditor of Public Accounts to transmit a certified copy of the entire record of the claim of petitioner for a refund of taxes; and,

The court having carefully considered this matter is of the opinion that the State Auditor of Public Accounts should transmit forthwith such copy of the aforesaid record to the Clerk of this Court so that this cause may be docketed for trial upon said record.

It Is Therefore, Ordered, Adjudged and Decreed that the State Auditor of Public Accounts shall promptly transmit a certified copy of the entire record of the claim of petitioner for a refund of taxes to the Clerk of this Court; and, the Clerk of this Court is hereby directed to mail a certified copy of this Order to the Auditor of Public Accounts together with a certified copy of the petition filed by Sgt. Jesse E. Snapp in this Court.

So Ordered, Adjudged and Decreed this 28th day of June, A. D. 1963.

Mike Carr, Chancellor.

[fol. 9] [File endorsement omitted]

IN THE CHANCERY COURT OF COPIAH COUNTY, MISSISSIPPI

JULY, 1963, TERM

Number 15,670

[Title omitted]

MOTION TO CONTINUE CAUSE TO VACATION TIME—
Filed July 8, 1963

Comes Now petitioner, Jesse E. Snapp, and moves the Court to continue this cause to a time in vacation to be heard upon the pleadings, the record of the State Auditor of Public Accounts and argument of counsel, and that thereafter a decree be rendered and entered on the minutes of this Court in vacation all with the same force and effect as though done during a regular term of this Honorable Court.

Respectfully submitted,

Jesse E. Snapp, Petitioner, By: Jack McDill, His Attorney.

It Is Agreed That This Cause May Be Heard and a Decree Effectively Rendered Thereon in Vacation.

Martin R. McLendon, Attorney for Defendants.

[fol. 10] [File endorsement omitted]

IN THE CHANCERY COURT OF COPIAH COUNTY, MISSISSIPPI

JULY 1963 TERM

No. 15,670

[Title omitted]

ORDER CONTINUING CAUSE TO VACATION TIME—July 8, 1963

This day came on to be heard the motion of petitioner, Sgt. Jesse E. Snapp, to continue this case for hearing and rendition of a decree on his petition to a time in vacation; and, the Court having heard and carefully considered said motion and being advised that the defendants have joined in said motion & have entered their appearance herein and have no objection thereto and have agreed that this cause may be heard and a decree rendered thereon in vacation, is of the opinion that the motion should be and it is hereby sustained.

It is, therefore, Ordered, Adjudged and Decreed that this cause shall be continued to a time in Vacation to be agreed upon by all parties hereto and then heard upon all of the pleadings, the record of the State Auditor of Public Accounts and argument of counsel and a final decree rendered and entered upon the minutes of this Court, all with the same force and effect as though done at and during a regular Term of this Court.

So Ordered, Adjudged and Decreed, during a regular term of this Court, this the 8th day of July, A.D., 1963.

Mike Carr, Chancellor.

Approved: Martin R. McLendon, Attorney for Defendants.

[fol. 11] [File endorsement omitted]

IN THE CHANCERY COURT OF COPIAH COUNTY, MISSISSIPPI

CERTIFICATE OF W. D. NEAL, STATE AUDITOR—
Filed July 13, 1963

DEPARTMENT OF PUBLIC ACCOUNTS
STATE OF MISSISSIPPI
William D. Neal, State Auditor

Robert S. Scott
Chief Accountant

J. S. McIlwain
Assistant State Auditor

T. R. Tomlinson
Computer Supervisor

JACKSON

STATE OF MISSISSIPPI
COUNTY OF HINDS

I, W. D. Neal, duly elected qualified and acting Auditor of Public Accounts, State of Mississippi, and Custodian of the Records thereof, do hereby certify that attached hereto is a true, correct, complete copy of all the papers and records on file in this office concerning the application for Ad valorem Tax Refund of Sergeant Jesse E. Snapp.

This the 12th day of July, 1963.

(Signed) W. D. Neal
State Auditor

[fol. 12]

ATTACHMENTS TO CERTIFICATE OF W. D. NEAL

DEPARTMENT OF PUBLIC ACCOUNTS

THIS CLAIM WILL NOT BE PAID IF ANY PAPER IS DETACHED.

STATE OF MISSISSIPPI

To Sgt. Jesse E. Snapp Dr.
Box 539, Crystal Springs, Miss.

for amount due on account of erroneous payment into the State Treasury of taxes, for the fiscal year ..... asper vouchers and evidence, on which such claim is based, filed herewith, on the following property, in the County of ..... as per the following statement:

Description	State Tax	County Tax	Adval'm
1959 Skyline Trailer $460.00 @ 4 Mil.	$1.84	$22.66	Reg. $2.50

State Tax	$ 1.84
County Tax	22.66
Reg. Fees	2.50
City of Crystal Springs	11.50
	$38.50

STATE TAX
LESS TAX COLLECTOR'S COMMISSIONS
NET AMOUNT TO BE REFUNDED by State $1.84

ATTORNEY GENERAL, MISSISSIPPI

I have this ..... day of ....., 194...., audited the claim of the above named claimant and find the amounts due him, according to his contention, is as above stated.

I now refer the audited claim and the evidence on which it is based to you for your inspection and approval or disapproval, as the case may be, and advise as to whether this refund can now be legally made by this department.

[fol. 13]

W. D. Neal
Auditor of Public Accounts

J. S. McIlWain
Deputy Auditor

Approved, this ..... day of ....., 194....

.....
Attorney General

.....
Assistant Attorney General

RECEIVED of the Auditor of Public Accounts, Pay Warrant No. ..... for $..... in full of the above claim against the State.

Jackson, Mississippi, ..., 194.....

(Sign here) .....
Claimant

Sign above receipt without detaching any papers from this sheet and return this sheet to the Auditor's Office, Jackson, Mississippi, and Pay Warrant will be sent wherever you direct on the lines below.

Send Auditor's Pay Warrant to ....., Mississippi

[fol. 14]

UNITED STATES DEPARTMENT OF JUSTICE

UNITED STATES ATTORNEY
Southern District of Mississippi
Jackson 5, Mississippi.
February 6, 1963.

Honorable William D. Neal
Auditor of Public Accounts
State of Mississippi
Woolfolk Building
Jackson, Mississippi

Re: Application for Refund of payment to Tax Collector, Copiah County, of ad valorem assessment on house trailers by Sgt. Jesse E. Snapp and Sgt. George E. Wandler

Sir:

Enclosed are applications for refund by Sgt. Jesse E. Snapp and Sgt. George E. Wandler, members of the United States Air Force stationed at Crystal Springs Air Force Station, Crystal Springs, Mississippi. You will note that Sgt. Snapp's trailer is located within the corporate limits of Crystal Springs on realty that he does not own and not on the military reservation. Sgt. Wandler's trailer is located on the military station on realty owned by the United States.

We have discussed this matter with Assistant Attorney General Martin R. McClendon and Mrs. John E. Stone, Attorney for the State Tax Commission, and they are conversant with our views and of the various issues involved. We have the original tax receipts in our files and will forward them to you if you desire, as well as assist in procuring any and all information you may require. We are taking the liberty of forwarding copies of this letter

and the applications to Messrs. McClendon and Stone except that copies of the photographs submitted with the original applications attached as Exhibit "A" are not readily available to us; however, we believe that Mr. McClendon and Mr. Stone have seen similar photographs.

We also submit a memorandum in support of both of the [fol. 15] applications which expresses our view. It will be appreciated if you will advise us as to anything that we may do to facilitate any investigation you desire and of any hearing and we would, of course, be pleased to receive notice of a determination favorable to the taxpayers.

We respectfully request that you receive the applications for filing and advise us of the date of filing.

Respectfully,

Robert E. Hauberg
United States Attorney

By: Jack McDill
JACK McDILL

JM/jb
Enclosures

cc: S/Sgt. George E. Wandler
Crystal Heights
Crystal Springs Air Force Station
Crystal Springs, Mississippi

S/Sgt. Jesse E. Snapp
Box 539
Crystal Springs Air Force Station
Crystal Springs, Mississippi

Department of Justice
Washington 25, D. C.

Colonel Sam F. Carter
Staff Judge Advocate
Keesler Air Force Base, Mississippi

Captain Robert A. Moline, USAF
Administrative Officer
627th Radar Squadron (SAGE)
Crystal Springs Air Force Station
Crystal Springs, Mississippi

Mr. Woodrow Purser
Sheriff and Tax Collector
Hazlehurst, Mississippi

Honorable Martin R. McClendon
Assistant Attorney General
State of Mississippi
New Capitol Building
Jackson, Mississippi

Honorable John E. Stone
Attorney at Law
State Tax Commission
Woolfolk Building
Jackson, Mississippi

[fol. 16] APPLICATION FOR REFUND

TO THE HONORABLE AUDITOR OF PUBLIC ACCOUNTS OF THE STATE OF MISSISSIPPI:

Now comes your petitioner, Jesse E. Snapp, and files this petition for refund under Section 9979 of the Mississippi Code of 1942, as amended and in support of his petition respectfully avers that:

I

This application relates to the payment by petitioner, under protest, of an assessment under House Bill No. 747, Laws of 1962, with respect to the house trailer in which he has lived since prior to November 1, 1962 (hereinafter referred to as the "Trailer").

II

At all times since October 28, 1961, petitioner has been and is a member of the United States Air Force on active duty and stationed at Crystal Springs Air Force Base in Copiah County, Mississippi. Petitioner is a Staff Sergeant, serial number AF 14443338, and is assigned as a permanent party at this base but may be ordered to duty elsewhere at any time.

III

Petitioner is, and at all times since his re-entry into military service on October 29, 1951, has been, a resident of and domiciled in Pacolet, South Carolina. At all times since October 28, 1961, petitioner's presence in the State of Mississippi and his absence from the State of South Carolina have been solely by reason of his compliance with military orders. Petitioner is a registered voter of the State of South Carolina, has relatives who are resident and domiciled there, and intends to return to and live in South Carolina upon the termination of his military service. At no time since his said re-entry into military service has [fol. 17] petitioner intended to lose or abandon his residence or domicile in South Carolina or to acquire any residence or domicile in Mississippi or elsewhere outside of South Carolina.

IV

The Trailer was purchased on May 16, 1959, and it has been in Mississippi since prior to November 1, 1962. The Trailer is a "house trailer" as defined by Section 2(a) of said House Bill No. 747 and is not and never has been registered or taxed under authority of Chapter 588, Laws of 1958 of Mississippi.

V

The Trailer was not registered on November 1, 1962, or at any time thereafter, under the laws of South Carolina or of any other state; nor did petitioner pay any taxes to South Carolina or any other state with respect to the

Trailer for any period beginning on or after November 1, 1962.

VI

The Trailer is, and at all times since November 1, 1962, has been parked at Sojourner's Trailer Court, 252 Cayuga Street, Crystal Springs, Copiah County, Mississippi, privately owned property in which petitioner does not have any interest.

VII

The Trailer is, and at all times since prior to November 1, 1962, has been, connected to a water main by means of a flexible plastic hose, to a sewer line by means of a four-inch galvanized pipe, and to electric power by a removable plug. All utility connections are easily detachable and detachment will not, in any manner, damage the Trailer, the realty upon which the Trailer is parked or any of said connections. At all times since prior to November 1, 1962, the Trailer has had wheels attached on which it could be moved on the public highways of the state, but has been and is supported by concrete blocks to stabilize it. The concrete blocks always have been and are easily removable without any [fol. 18] damage to the Trailer or the realty on which it is parked. The attached photograph, Exhibit "A", is a fair representation of the Trailer and how it is and has been parked and connected to utilities at all times since prior to November 1, 1962. The Trailer is not now and never has been, self-propelled.

VIII

Attached hereto marked Exhibit "B", and hereby made part hereof is a copy of a letter dated December 15, 1962, which petitioner received from the Sheriff and Tax Collector of Copiah County. Because of the demand and threats made therein, petitioner, on December 28, 1962, paid the Sheriff and Tax Collector of Copiah County, under protest, the sum of $38.50, in payment of the assessment made with respect to the Trailer under House Bill No. 727, Laws of 1962, for which he received Tax Receipt No. 11339.

IX

Petitioner alone has borne the burden of said assessment and has not, directly or indirectly, passed on or received reimbursement or collected payment for, any portion of said sum paid by him, to or from any party, and stands ready to submit, upon request, said receipt.

X

The Trailer is, and at all times since prior to November 1, 1962, has been, personal property within the meaning of Section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended. (50 U.S.C. App. Section 574) By reason of petitioner's residence and domicile in South Carolina at all times since prior to November 1, 1962, and the provisions of said Section 514, the Trailer may not be deemed to be or to have been located or present in or to have had a situs for taxation in Mississippi on or at any time after November 1, 1962.

XI

[fol. 19] Said assessment and collection thereof were erroneously and illegally made and received, in violation of Section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, (50 U.S.C. App. Section 574) and the Constitution of the United States and petitioner is justly entitled to refund of said payment made by him with interest thereon.

WHEREFORE, petitioner requests that the Auditor of Public Accounts and all other officers of the State of Mississippi and Copiah County empowered in the premises, determine that petitioner is entitled to, and order, direct, and make refund to him of sums aggregating $38.50, with interest thereon from December 28, 1962.

Respectfully submitted,

Jesse E. Snapp
STAFF SERGEANT JESSE E. SNAPP
Petitioner

STATE OF MISSISSIPPI
COUNTY OF COPIAH

Personally came and appeared before me, the undersigned authority authorized to administer oaths in the County and State aforesaid Staff Sergeant Jesse E. Snapp, a member of the United States Air Force on active duty, who, being by me first duly sworn, deposes and says:

The matters and things stated to be true in the foregoing petition are true as therein stated upon the personal knowledge of petitioner; and,

The matters and things stated to be true upon information and belief are upon trustworthy information which petitioner verily believes to be true.

Jesse E. Snapp
STAFF SERGEANT JESSE E. SNAPP

SWORN TO And subscribed before me this the 4th day of February, A.D., 1963.

Gladys Wallace

[fol. 21]

EXHIBIT "B" TO APPLICATION OF JESSE E. SNAPP

COPY

Office of
WOODROW PURSER
Sheriff and Tax Collector
Copiah County
Hazlehurst, Miss.

Dec. 15, 1962

Mr. Jessie E. Snapp
Box 539
Crystal Springs AFS
Crystal Springs, Miss.

Dear Sir:

Under the provisions of House Bill No. 747 of the General Laws of the State of Mississippi of 1962, you are hereby

notified that under authority of the aforesaid statute, taxes have been assessed and levied on one house trailer owned by you and located in Copiah County, Mississippi, in the amount of $51.02, and that said taxes are now due and owing by you. These taxes became due and payable on or before November 1, 1962, and became delinquent within thirty days thereafter.

If these taxes are not paid in full by January 1, 1963, then I, as Tax Collector of Copiah County, Mississippi, by law, will sell said house trailer for such delinquent taxes, plus 25 per cent damages and interest and other costs, during legal house on Monday, January 28, 1963, after due notice of said sale has been published in a newspaper in Copiah County, Mississippi.

Respectfully yours,

.....

Sheriff and Tax Collector
Copiah County, Mississippi

[fol. 22]

MEMORANDUM IN SUPPORT OF APPLICATIONS OF NONRESIDENT SERVICEMEN FOR REFUND OF ASSESSMENTS MADE AND PAID UNDER HOUSE BILL No. 747, LAWS OF 1962—February, 1963

As appears from the petitions (Par. IV) the house trailers here involved fall within the purview of House Bill No. 747. However, as also appears from the petitions (Par. III), petitioners are, and since prior to November 1, 1962, have been domiciled and resident outside Mississippi. The propriety of the assessments here involved depends, therefore, on whether they are permitted or forbidden by Section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, (50 U.S.C. App. Section 574) which provides:

(1) For the purposes of taxation in respect of any person, or of his personal property, . . . by any State, . . .

> or political subdivision, . . . such person shall not be deemed to have lost a residence or domicile in any State . . . solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become a resident in or a resident of, any other State, . . . or political subdivision . . . while, and solely by reason of being, so absent. For the purpose of taxation in respect of the personal property . . . of any such person by any State, . . . or political subdivision . . . of which such person is not a resident or in which he is not domiciled, . . . personal property shall not be deemed to be located or present in or to have a situs for taxation in such State, . . . or political subdivision. . . .

[fol. 23]

> (2) When used in this section, (a) the term "personal property" shall include tangible and intangible property (including motor vehicles), and (b) the term "taxation" shall include but not be limited to licenses, fees, or excises imposed in respect of motor vehicles or the use thereof: *Provided,* That the license, fee or excise required by the State, Territory, possession, or District of Columbia of which the person is a resident or in which he is domiciled has been paid.

Since the house trailers are personal property and petitioners were and are nonresidents of Mississippi, the trailers have not had any situs for taxation in Mississippi. This is true even though petitioners have not registered or paid any taxes with respect to their house trailers under the laws of any other State. (*Dameron* v. *Brodhead,* 345 U.S. 322)

The proviso at the end of subdivision (2) is not applicable here for two reasons. First, the trailers here taxed are not "motor vehicles" and second, the charges imposed are not for a "license, fee or excise."

Surely the house trailers are not "motor vehicles" within the common usage of that term. As appears from the peti-

tions, (Par. VII), they are not self-propelled, and, within the definition of Section "(a) of House Bill No. 747, they are "drawn or moved by motive power not (their) own." It is reasonable to assume that Congress did not intend "motor vehicle" as used in the proviso, to include trailers such as are here involved. Moreover, the proviso is inapplicable here even if the trailers are assumed to be "motor vehicles". For House Bill No. 747 clearly imposes an "ad valorem tax," whereas the proviso deals only with a "license, fee, or excise." True, each assessment includes [fol. 24] $2.50 for what is denominated a "registration fee." However, in considering the validity of a state tax "we are concerned only with its practical operation, not its definition or the precise form of descriptive words which may be applied to it." (*Lawrence* v. *State Tax Commission,* 286 U. S. 276, 280) Here, under Section 3 of House Bill No. 747, the "ad valorem tax" must be paid before a house trailer may be registered. In practical operation and effect, therefore, the "registration fee" is inseparable and indistinguishable from the "ad valorem tax." Thus, it too is necessarily barred by Section 514 of the Soldiers' and Sailors' Civil Relief Act.

Nor can the applicability of House Bill No. 747 to nonresident servicemen be saved by the contention that the trailers are realty rather than personal property. True, if realty, Section 514 does not create any impediment to taxation of the trailers. However, if realty, no tax is imposed on the trailers by House Bill No. 747. For, by its terms, it taxes only personalty. This is apparent not only from Sections "(a) and 8 of the Bill, but particularly from the past paragraph of Section 10 which provides: "Any house trailer or mobile home sold under authority of this act for unpaid taxes thereon shall be sold by the sheriff as other personal property is sold * * *." However, whether House Bill No. 747, as here applied, is a tax on personal property within the meaning of the Soldiers' and Sailors' Civil Relief Act, is a federal question. "Where a federal right is concerned we are not bound by the characterization given to a state tax by state courts or legislatures,

or relieved by it from the duty of considering the real nature of the tax and its effect upon the federal right asserted." (*U. S.* v. *Allegheny County,* 322 U. S. 174, 184, quoting from *Carpenter* v. *Shaw,* 280 U. S. 363, 367-368) Clearly, by its terms and as here applied, House Bill No. 747 taxes personalty within the meaning and in violation of Section 514 of the Soldiers' and Sailors' Civil Relief [fol. 25] Act.

Finally assuming that House Bill No. 747 imposes a tax on realty not violative of the Soldiers' and Sailors' Civil Relief Act, the assessment of trailers parked on Government-owned property is nevertheless illegal. For under such a hypothesis, the trailers would be part of the federally-owned land. Surely it cannot be contended that federally-owned realty is subject to state taxation in the absence of express congressional consent. (*U. S.* v. *Allegheny County, supra,* at page 177) Congress has not expressly or impliedly consented to the taxation here involved.

Wherefore, it is respectfully requested that the petition be granted in all respects.

Respectfully submitted,

Robert E. Hauberg, United States Attorney, By: Jack McDill, Assistant, P. O. Box 2091, Jackson, Miss.

February, 1963

STATE OF MISSISSIPPI

No. 11939

HOUSE TRAILER REGISTRATION

15 — COUNTY DIST. | 1963 REG. NO. | 461 — LENGTH

Taxing District C 5 C.S. Corp County Copiah

Received of Jesse E. Snopp Box 539 Crystal Springs, Miss.
NAME OF PERSON OCCUPYING VEHICLE — ADDRESS

THE SUM SHOWN BELOW AS REGISTRATION FEE AND AD VALOREM TAXES ON SUBJECT HOUSE TRAILER IN THIS STATE UNTIL NOV. 1ST 1963.

Make of Trailer Skyline 1959 — YEAR MODEL VEHICLE | 10 ft. — WIDTH | 46-3160-Y 59 — SERIAL NO.

Acquired from Southern Mr. Sales Gulfport — NAME — ADDRESS | 5/16/59 — DATE | USE TAX PAID

Trailer Court Parked on Fairgrounds Tr. Court - 253 Crystal St. C Springs — NAME — ADDRESS

Ad Valorem Tax Situs	Valuation	Tax Rate	TAXES Full	TAXES Proration	DAMAGES	TOTAL
State and County Tax	460	5325	2450			
Municipal Taxes	460	2500	11 50			
Municipal Sep. School						
Total Ad Valorem Taxes			36 00			36 00

SUMMARY		
Reg. Fee	2	50
Adv. Taxes	36	00
Damages		
Total	38	50
GRAND TOTAL ALL TAXES & FEES	38	50

Countersigned

Chmn. State Tax Comm.

Dated at Nay. Miss. This 28 day Dec 1963

W. Pinson Sheriff & T. C. Lee D. S.

[fol. 27]

STATE OF MISSISSIPPI
DEPARTMENT OF JUSTICE.
Jackson 5,
February 27, 1963.

Mr. W. D. Neal, Auditor
Department of Public Accounts
New Capitol Building
Jackson, Mississippi

Re: Sgt. Jesse E. Snapp
Application for Tax Refund

Dear Mr. Neal:

An examination of the above-styled application for tax refund reveals that we need additional information in order to properly consider the same.

Please determine where the trailer in question was purchased and the original purchase price thereof. Please, also, determine how the trailer was transported to its present location, if it was not, in fact, purchased at its present site, and the number of places where the trailer has been transported or moved along the highways of the State of Mississippi.

Please have the applicant advise whether the trailer has, in fact, ever been licensed or registered as a motor vehicle in South Carolina or in any other state and what, if any, taxes have ever been paid thereon.

Please, also, have the applicant advise us whether or not South Carolina requires registration of house trailers as motor vehicles as a prerequisite to their being drawn along the highways of that state.

The application includes pictures which we think are incomplete. Please have the applicant submit full pictures of all four sides of the trailer in question.

Applicant's attorneys assert in their memorandum of authority that the tax imposed is not valid insofar as the applicant is concerned because 50 U.S.C. 574 requires only that license, fee or excise required of the state of the residence of the serviceman be paid. Please have them cite authority, federal or state, which prohibits a state from [fol. 28] making the payment of ad valorem taxes a prerequisite to the issuance of a license.

When we have received this additional information, we will be in a better position to consider the application.

Sincerely yours,

JOE T. PATTERSON, ATTORNEY GENERAL

BY Martin R. McLendon
Assistant Attorney General

MRMcL/ljg

[fol. 29]

UNITED STATES DEPARTMENT OF JUSTICE

UNITED STATES ATTORNEY
SOUTHERN DISTRICT OF MISSISSIPPI
P. O. Box 2091
Jackson, Mississippi
March 25, 1963

Mr. W. D. Neal, Auditor
Department of Public Accounts
New Capitol Building
Jackson, Mississippi

Dear Mr. Neal:

Re: Sgt. Jesse E. Snapp
Application for Tax Refund

In connection with the Application for Refund of Sgt. Jesse E. Snapp we enclose his Affidavit together with four (4) photographs of each side of his trailer. We request that this letter be considered as a part of your file in making your determination as to the refund.

Since Sergeant Snapp's house trailer is not a "vehicle which is self propelled", it does not come within South Carolina's statutory definition of a "motor vehicle" (So. Car. Code, 1952, §46-2(2)). Therefore, its registration as a motor vehicle, was not a prerequisite to its being drawn along the highways of South Carolina.

A request was made for citation of any authorities, federal or state, bearing on the question whether a state is prohibited from making the payment of ad valorem taxes a prerequisite to the issuances of a license. The question as thus posed by the Attorney General does not fully state the issue here. Rather, the question is whether a state may constitutionally require a nonresident serviceman, as a condition of the issuance of a license permitting him to move his house trailer over Mississippi highways, to forfeit a right to exemption from state and local taxation accorded by federal statute. The following authorities inescapably compel the conclusion that the imposition of such a condition is forbidden by the federal constitution. *Frost & Frost Trucking Co.* v. *Railroad Commission of California,* 271 U.S. 583, 592-599; *Looney* v. *Crane Co.,* 245 U.S. 178, 187, [fol. 30] 188; *Western Union Telegraph Co.* v. *Kansas,* 216 U.S. 1, 36, 38, 48; *Pullman Co.* v. *Kansas,* 216 U.S. 56, 62, 63; *Ludwig* v. *Western Union Telegraph Co.,* 216 U. S. 146.

Yours very truly

ROBERT E. HAUBERG
United States Attorney

By: Jack McDill
ASSISTANT

JR:irr
CC: Department of Justice (2)
Tax Division
General Litigation Section
Washington, D.C.
DJ File: LFO:FBU:WM:LCC
2365;7-25-3

cc: Honorable Martin McLendon
Assistant Attorney General
State of Mississippi
New Capitol Building
Jackson, Mississippi

cc: Honorable John E. Stone
Attorney at Law
State Tax Commission
Woolfolk Building
Jackson, Mississippi

cc: Colonel Sam F. Carter
Staff Judge Advocate
Keesler Air Force Base, Mississippi

[fol. 31]

AFFIDAVIT OF SERGEANT
JESSE E. SNAPP

STATE OF MISSISSIPPI
COUNTY OF COPIAH

Personally came and appeared before me, the undersigned authority at law in and for the County and State aforesaid, SGT. JESSE E. SNAPP, United States Air Force, who, being by me first duly sworn, deposes and says that:

1. I purchased my house trailer from Southern Trailer Sales Company, Greenville, Mississippi, on May 16, 1959, for $5,330.00. Mississippi State Sales tax was paid when purchased. The sales agency moved my trailer for me over a Mississippi highway to a point a few miles outside of Greenville, Mississippi.

The trailer remained at that location until October 1961, when I was transferred to Crystal Springs Air Force Station in October 1961. The trailer was transported from Greenville, Mississippi, to Crystal Springs, Mississippi, over Mississippi Highways by Transit Homes, Inc. It has not been on a Mississippi highway since that time.

2. My house trailer has never been licensed or registered as a motor vehicle in South Carolina or any other state and no taxes have ever been paid thereon except Mississippi sales tax mentioned above.

3. I do not know whether or not my home state, South Carolina, requires registration of house trailers as motor vehicles as a prerequisite to their being drawn over the highways of that state. I have made an inquiry of the Mississippi State Highway Patrol, but it did not have information as to whether or not registration is required. My First Sergeant telephoned an [fol. 32] air force base in South Carolina and was told that such license or registration was not required.

4. Attached are photographs depicting all four sides of my trailer.

Jesse E. Snapp
SERGEANT JESSE E. SNAPP

SWORN TO and subscribed before me this the 13 day of March, A.D., 1963.

Joe W. Telford
JOE W. TELFORD, CAPTAIN, USAF,
SUMMARY COURT OFFICER

Authorized to administer oaths pursuant to 10 USC 936 and AFR 20-16

[fol. 33]

DEPARTMENT OF PUBLIC ACCOUNTS
STATE OF MISSISSIPPI
JACKSON

February 7, 1963

Hon. Robert E. Hauberg
United States Attorney
Post Office Building
Jackson, Mississippi

Re: Application for refund of Ad valorem Taxes by Sgt. Jesse E. Snapp and George E. Wandler

Dear Sir:

We acknowledge receipt of the above captioned application for a refund of ad valorem taxes.

Please send to this office the original or certified copies of the tax receipts to be attached to the applications for presentation to the Attorney General for his approval or disapproval.

Very Truly Yours,

W. D. NEAL, STATE AUDITOR

J. S. McIlwain
Assistant Auditor

JSM: m

[fol. 34]

UNITED STATES DEPARTMENT OF JUSTICE
UNITED STATES ATTORNEY
SOUTHERN DISTRICT OF MISSISSIPPI
Jackson 5, Mississippi
February 8, 1963.

Department of Public Accounts
State of Mississippi
New Capitol Building
Jackson, Mississippi

Re: Application for refund of ad valorem taxes by Sgt. Jesse E. Snapp and Sgt. George E. Wandler

ATTENTION: Hon. W. D. Neal, State Auditor
Hon. J. S. McIlwain, Assistant Auditor

Gentlemen:

Enclosed herewith please find Tax Receipt No. 11344 for Sgt. George E. Wandler and Tax Receipt No. 11339 for Sgt. Jesse E. Snapp, which you requested that we send to you in your letter to us of February 7, 1963.

Very truly yours,

ROBERT E. HAUBERG
United States Attorney

By: Jack McDill
ASSISTANT

JM/jb

Enclosures (2)

[fol. 36]

STATE OF MISSISSIPPI
DEPARTMENT OF JUSTICE
JACKSON 5,

April 4, 1963

Mr. W. D. Neal
State Auditor of Public Accounts
New Capitol Building
Jackson, Mississippi

Re: Application for tax refund of Sgt. Jesse E. Snapp, Box 539, Crystal Springs, Mississippi

Dear Mr. Neal:

The above-styled application for tax refund is based upon an alleged exemption granted by 50 USC App. 574. The provisions of that federal statute deemed pertinent to this application provide as follows:

"(1) For the purpose of taxation in respect of any person, or of his personal property, . . . by any State, . . . such person shall not be deemed to have lost a residence or domicile in any State, . . . solely by reason of being absent therefrom in compliance with military orders . . . For the purposes of taxation in respect of the personal property, . . . of any such person by any State, . . . of which such person is not a resident or in which he is not domiciled . . . *and personal property shall not be deemed to be located or present in or to have a situs for taxation in such State,* . . . .

"(2) When used in this section, (a) the term 'personal property' shall include *tangible* and *intangible property* (including *motor vehicles*), and (b) the term 'taxation' shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles or the use thereof: *PROVIDED, That the license, fee,*

[fol. 37] *or excise required by the State, . . . of which the person is a resident or in which he is domiciled has been paid."*

It will be noted that the federal statute in question does not grant an exemption from taxation, but it creates a legal fiction that personal property of a serviceman shall not be deemed to have lost its situs in his home state and acquired a situs where it is, in fact, physically located. As regards all other items of personal property, except motor vehicles, the legal fiction thus created is a bar to taxation by a state other than the state of the domicile of the serviceman. *Dameron vs. Broadhead,* 345 U. S. 322, 97 L.ed. 1041.

However, the statute itself provides that in order for the legal fiction to be effective, insofar as motor vehicles are concerned, the serviceman must have paid taxes in the state in which he is a resident or domiciled.

This application shows conclusively that no taxes have been paid on this house trailer in any state other than the taxes for which this application for refund is made. The application shows further that the property upon which the tax was paid is, in fact, a motor vehicle. Chapter 535 (H.B #747, Laws of 1962 and Chapter 588, Laws of 1958.

The State of South Carolina wherein the applicant is domiciled requires that each trailer, including "house trailers," shall be registered, licensed and a registration fee paid thereon. Sections 46-2 (13), 46011 and 46-35.3, Code of Laws of South Carolina 1962.

The application shows further that the applicant has failed and refused to register his house trailer under the provisions of Chapter 588, Laws of 1958, which said statute grants to him an exemption from the payment of ad valorem [fol. 38] taxes because of the legal fiction created by 50 USC App. 574. Biennial Report of the Attorney General of the State of Mississippi 1957-59, page 99, a copy of which is attached hereto.

From the foregoing, it is the opinion of this office that the taxpayer was and is liable for the tax paid. Which said payment was made by his own election not to register his motor vehicle in the state of his domicile thereby failing to bring himself within the provisions of the federal statute, or by avoiding the tax by registering his motor vehicle under a statute of this state under which the payment of the taxes is not required. *Whiting vs. City of Portsmouth,* 202 Va. 609, 118 SE 2d 505, supports this view.

It follows that this application for refund should be and the same is hereby disapproved.

Sincerely yours,

JOE T. PATTERSON, ATTORNEY GENERAL

By Martin R. McLendon
Assistant Attorney General

MRMcL/ljg

Enclosure
cc: Hon. John Stone

[fol. 39]

"EXCERPTS FROM 1957-1959 BIENNIAL REPORT OF THE ATTORNEY GENERAL OF MISSISSIPPI—TAXES"

TAXES—ASSESSMENTS: Assessment schedule of motor vehicles that has been finally adopted cannot be altered or amended.

By: McLendon, Assistant

August 8, 1958

This is in reply to yours of August 6, 1958, wherein you advise that the City of Brookhaven has adopted the motor vehicle assessment schedule supplied by the State Tax Commission. You then ask whether or not the city may now rescind its order adopting this schedule and make up an assessment schedule of its own.

It is my opinion that once the assessment schedule has been finally adopted by the city it may not then deviate from the assessment schedule as adopted.

TAXES—ASSESSORS: Assessors should assess taxes upon the record as he finds it and not attempt to determine true condition of the title.

By: McLendon, Assistant

January 22, 1959

This is in reply to yours of January 20, 1959, wherein you ask about the condition of the title to certain Sixteenth Sections of the Chickasaw Cession.

This office is not equipped to determine the statute of the title of these lands. It is my personal understanding that some of the Sixteenth Sections in the Chickasaw Cession were sold to individuals.

For the purpose of assessing these lands for ad valorem taxes you, as tax assessor, must accept the record as it appears and assess the land and improvement thereon at their fair value as compared with the value of surrounding lands. The determination of the true condition of the title is a matter for the Legislature and the Courts to determine.

TAXES—ASSESSORS: Supervisors are not required to pay additional compensation to the assessors, as authorized by Section 4162 of the Code, but may do so at the discretion of the Board.

By: McLendon, Assistant

October 3, 1958

This is in reply to yours of September 29, 1958, wherein you ask whether your Board of Supervisors is required to allow the $1,000 additional compensation authorized to be paid to tax assessors in counties wherein there are more than 25 or more producing oil wells.

Section 4162, Mississippi Code of 1942, Recompiled, authorizes the additional compensation to tax assessors in counties wherein there are 25 or more producing oil wells. This statute only authorizes the Board of Supervisors to pay the additional compensation. If the Board, in the exercise of its discretion, determines that the additional com-

pensation should not be paid it cannot be required to make this allowance.

This statute is not affected by your regular salary statute.

PRIVILEGE TAX—AUTO, ROAD & BRIDGE.

By: McLendon, Assistant

November 26, 1958

This is in reply to yours of November 20, 1958, wherein you ask the following questions:

> "If a person buys a new car and sells his old car to an individual, can he trade his tag in on his new car?
>
> "If a person sells his car to an individual and leaves his tag on the car, can he transfer the tag out of his name?"

In answer to your first question, there is no provision for credit to be allowed for the surrender of a license tag when it is sold to an individual.

In answer to your second question, Section 9352-56, Mississippi Code of 1942, Recompiled, provides that a transfer of ownership of a licensed automobile should be reported to the tax collector or the Motor Vehicle Comptroller, whichever shall have issued the license tag upon said motor vehicle, within seven (7) days after such sale, assignment or transfer.

TAXES—DELINQUENT SALES: Sheriff should proceed to sell property for delinquent ad valorem taxes at the regular time and place for such sales even though the advertisement of such sales contained an error.

By: McLendon, Assistant

September 15, 1958

This is in reply to yours of September 11, 1958, wherein you advise that the advertisement for the sale of property for delinquent ad valorem taxes contained an error as to the date upon which that sale was to be made. You then ask

whether or not the sale should be conducted at the regularly scheduled time.

Section 9923, Mississippi Code of 1942, Recompiled, provides for tax sales to be made on the 3rd Monday of September. This section also provides that an error in the advertisement shall not invalidate a sale made at the proper time and place.

It is therefore the opinion of this office that you should proceed with the sale at the proper time and place as though and as if the error in advertisement had not been made.

TAXES—EXEMPTIONS: Land used exclusively for burial purposes is entitled to tax exemption even though some of the grave sites have not been put in use.

By: McLendon, Assistant

December 23, 1958

This is in reply to yours of December 18, 1958, wherein you ask if there is any way that several acres of land located in your county and developed into a private cemetery may be assessed for ad valorem taxes.

Section 9697 (a), Mississippi Code of 1942, Recompiled, as amended, provides that "all cemeteries used exclusively for burial purposes" shall be exempt from taxation. If the property in question is used exclusively for burial purposes, it is exempt by the statute and cannot be assessed by your office. The fact that some of the grave sites have been bought and not presently in use would not effect the right of the cemetery to be exempt.

TAXES—EXEMPTIONS: Members of the armed forces are not liable for ad valorem taxes on personally owned automobiles not used in business.

By: McLendon, Assistant

July 11, 1958

This is in reply to yours of July 2, 1958, wherein you ask whether or not personal automobiles of members of the

armed forces stationed in your city are exempt from state, county, and municipal ad valorem taxes whether the tag is bought in this state or another state.

Section 574, Title 50, USCA, provides that when a member of the armed forces is in any state in compliance with military or naval orders his " . . . personal property shall not be deemed to be located or present in or to have status for taxes in such state . . . " Section 21 of House Bill No. 3, of the Regular Session of 1958, provides "Any motor vehicle driven over the highways of this state to the extent that the owner of such motor vehicle is required to purchase a road and bridge privilege license in that state, yet the [fol. 40] legal situs of such motor vehicle is located in another state, shall be exempt from ad valorem taxes authorized by this act."

It is, therefore, the opinion of this office that members of the armed forces of the United States who are nonresidents of the State of Mississippi and who are residing in your community in compliance with military or naval orders are exempt from the payment of ad valorem taxes improved by House Bill No. 3, supra, whether they pay the road and bridge privilege license tax and purchase their license plates in Mississippi or not, provided the automobile in question is not used in any way for a trade or business.

TAXES—EXEMPTIONS: Tax exemptions of National Guardsmen as found in Section 8597, Mississippi Code of 1942, Recompiled does not apply to any tax that is presently being levied.

By: McLendon, Assistant

September 19, 1958

This is in reply to yours of September 17, 1958, wherein you ask what tax National Guardsmen are exempt from by the provisions of Section 8597, Mississippi Code of 1942, Recompiled.

This office has heretofore held that the words " . . . road duty, and road tax and street tax, . . . " as used in the

statute have reference to the commutation tax only. The authority to levy a commutation tax has been repealed by the legislature. The commutation tax is therefore not due from anyone under the statutes as they now exist.

The exemption therefore has no application to taxes presently due or being assessed.

TAXES—POLL, POLL EXEMPTIONS: Receipt for poll tax should show dates of actual payment.

By: Griffin, Assistant

April 16, 1959

I am in receipt of your letter of April 14, 1959, wherein you state that a resident of your county paid his property tax for the year 1957 and called for a poll tax receipt and paid for the same. However, he did not receive it. You request an opinion of this office as to whether or not the Sheriff now has the authority to issue this person a proper dated poll tax receipt for the year 1957.

If this person actually tendered the money to the Sheriff for the payment of his poll tax, then he is entitled to a receipt as of the date of the tender. This is a factual matter for the determination of the Sheriff, subject, of course, to review by the Election Commissioners.

TAXES—EXEMPTIONS: Religious society liable for taxes that are lien against property when the property is acquired.

By: McLendon, Assistant

March 16, 1959

This is in reply to yours of March 14, 1959, wherein you pose the following:

> "Query: For what period is real property taxable when a purchaser acquires title after January 1, and when the said purchaser is exempt under the law?"

In the case of McHenry Baptist Church vs. McNeil, 86 Miss. 22, 38 So. 195, the Court held that where a religious

organization acquired property after the lien for taxes had attached thereto it took same subject to such lien and that the exemption from taxation did not commence except as to taxes which became a lien after the property was so acquired.

It is, therefore, the opinion of this office that real property that is acquired by a religious society that is exempt from the payment of taxes does not become eligible for the exemption until taxes that have become a lien before the property was acquired have been paid. The fact that the contract for the purchase was made before the tax lien date is immaterial to this inquiry.

TAXES—POLL, POLL EXEMPTIONS: Wife of service man may, if out of this state with her husband, vote an absentee ballot without payment of poll tax.

By: Griffin, Assistant

March 28, 1959

I have your letter of March 18, 1959, wherein you request an opinion of this office as to whether or not a serviceman's wife is entitled to vote when she does not hold the proper poll tax receipts.

If the husband is in service and his wife is absent from the state with her husband, and he is a citizen of this state, she is entitled to vote and an absentee ballot and to obtain a poll tax exemption certificate. Sections 3196-01 and 3196-07, Mississippi Code of 1942.

TAXES—HOMESTEAD EXEMPTION: Homesteads of a county may be charged with any levy made for general county purposes in excess of the amount authorized by Section 9879 according to the total assessed value of the county.

By: McLendon, Assistant

October 29, 1958

This is in reply to yours of October 15, 1958, wherein you advise that the assessed valuation of the property of Issaquena County was less than 10% in excess of $5,000,-

000.00 for the year 1957. You advise that you anticipate that the total assessed valuation for the year 1958 will be less than $5,000,000.00.

Your letter then asks if your board of supervisors makes a general county levy of 10 mills, provided for by Section 9879, Mississippi Code of 1942, Recompiled, for counties of less than $5,000,000.00 assessed valuation for the year 1958, will it be subject to being charged for homestead exemption charge-back for the part of the levy in excess of 9 mills.

It is the opinion of this office that it would be proper for the Homestead Division of the State Tax Commission to charge the counties homestead exemptions with any levy in excess of 9 mills, which was authorized by the total assessed valuation of the property of Issaquena County on January 1, 1958.

TAXES—MUNICIPAL: Liability of municipally owned lands for drainage tax.

By: Griffin, Assistant

September 17, 1958

I have your letter of September 10, 1958, wherein you request an opinion of this office if the town of Shelby is liable for drainage tax on municipal-owned lands. It is assumed that this question relates to the payment of assessments for the original improvement, that is, assessments for the original bond issue, because after asking for an opinion on the above you then inquire if the maintenance tax may be levied against the municipality on an acreage basis.

The Supreme Court of Mississippi has answered the precise questions presented here. *In Willie Creek Drainage District vs. Yazoo County,* 209 Miss. 849, 48 So. (2nd) 498, it was held that when a county became the voluntary purchaser of lands located within an established drainage district, which lands had been lawfully encumbered by betterment liens, the county would not acquire the lands free of the liens. This would likewise apply to lands acquired by a municipality after the liens had become effective. So, therefore, if the town of Shelby acquired the land in question

after the assessments had been made, then the town would be liable for the drainage tax until the bonds are paid in full.

[fol. 41]

DEPARTMENT OF PUBLIC ACCOUNTS
STATE OF MISSISSIPPI.
Jackson
April 5, 1963

Hon. Robert E. Hauberg
United States Attorney
Post Office Building
Jackson, Mississippi

Attention Mr. Jack McDill, Assistant

Dear Sir:

The claim for a refund on State Ad valorem Taxes for Sgt. Jesse E. Snapp has been disallowed by the Attorney General.

We are enclosing a photostatic copy of his opinion.

If we can be of further assistance to you, please call upon us.

Sincerely yours,

W. D. NEAL, STATE AUDITOR

J. S. McIlwain
Assistant Auditor

JSM:m

Enclosure

Filed Jul 13, 1963

Boyd Mullen, Chancery Clerk

By Irene Pevey, D.C.

[fol. 42] [File endorsement omitted]

IN THE CHANCERY COURT OF COPIAH COUNTY, MISSISSIPPI

No. 15,670

[Title omitted]

FINAL ORDER—August 13, 1963

This cause came on to be heard on August 9, 1963, after having been set for a hearing in vacation by proper order entered at term time, and the Court having heard and considered the petition for appeal and review, and having studied the record and authorities relied upon by counsel, and having heard oral argument of counsel for petitioner and defendants, doth find that the action of the Attorney General in disapproving the claim shall be affirmed by the Court.

It Is Therefore, Ordered, Adjudged and Decreed that the action of the Attorney General in disapproving the claim for tax refund be and the same is hereby affirmed by the Court for the reasons set forth in the Attorney General's opinion and the authorities cited therein and the additional authority contained in Section 46-100, Code of Laws of South Carolina 1962.

It is further ordered and judgment is hereby entered against the petitioner for all costs of the proceeding, for which let execution issue.

Ordered, Adjudged and Decreed this the 13th day of August, A.D., 1963.

Mike Carr, Chancellor.

[fol. 42-A]
IN THE CHANCERY COURT OF COPIAH COUNTY, MISSISSIPPI

UNITED STATES DEPARTMENT OF JUSTICE

UNITED STATES ATTORNEY
Southern District of Mississippi
P. O. Box 2091
Jackson, Mississippi 39205
October 31, 1963

Honorable Boyd Mullen
Chancery Clerk, Copiah County
Hazlehurst, Mississippi

Re: Sgt. Jesse E. Snapp vs. Honorable W. D. Neal, State Auditor of Public Accounts and Honorable Joe T. Patterson, Attorney General of the State of Mississippi—No. 15670 Chancery Court, Copiah County, Mississippi

Dear Sir:

Please transcribe the entire record of this case which is now on file in your office, and file the complete record in the Supreme Court of the State of Mississippi.

An appeal bond in the Principal amount of Five Hundred Dollars is immediately forthcoming.

Respectfully,

Jack McDill
JACK McDILL
P. O. Box 2091
Jackson, Mississippi 39205
Attorney for Sgt. Jesse E. Snapp

JM/jb

Filed Nov 1, 1963

Boyd Mullen, Clerk

By: Irene Pevey, D.C.

[fol. 43]

UNITED STATES DEPARTMENT OF JUSTICE
UNITED STATES ATTORNEY
SOUTHERN DISTRICT OF MISSISSIPPI
P. O. Box 2091
Jackson, Mississippi 39205
November 1, 1963.

Honorable Boyd Mullen
Chancery Clerk, Copiah County
Hazlehurst, Mississippi

Re: Sgt. Jesse E. Snapp vs. Honorable W. D. Neal, State Auditor of Public Accounts and Honorable Joe T. Patterson, Attorney General of the State of Mississippi—No. 15670 Chancery Court, Copiah County, Mississippi

Dear Sir:

We enclose Appeal Bond in the principal amount of $500.00. We trust that you will find it in order. It will be appreciated if you will advise us when the Transcript has been filed with the Supreme Court.

It will also be appreciated if you will invoice U. S. Air Force for all costs but mail the invoice to our office.

Very truly yours,

ROBERT E. HAUBERG
United States Attorney

By: Jack McDill
ASSISTANT

JM/jb

Enclosure

Filed Nov. 2, 1963.

Boyd Mullen, Clerk.

[fol. 44] [File endorsement omitted]

IN THE CHANCERY COURT OF COPIAH COUNTY, MISSISSIPPI

APPEAL BOND—Filed November 2, 1963

THE STATE OF MISSISSIPPI
COPIAH COUNTY

Know All Men by These Presents, That we, Sgt. Jesse E. Snapp, as principal, and Fidelity and Deposit Company of Maryland, sureties, are held and firmly bound unto The State of Mississippi in the penal sum of Five Hundred and no/100 Dollars ($500.00), for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators jointly and severally, firmly by these presents.

Signed and delivered the 1st day of November, 1963.

The Condition of the Foregoing Obligation is Such, That whereas, in a cause lately pending in the Chancery Court of Copiah County a decree was rendered against Sgt. Jesse E. Snapp in Vacation on the 13th day of August, 1963, which decree was filed in the office of the Chancery Clerk of Copiah County, Mississippi, on the 14th day of August, 1963, and the said Sgt. Jesse E. Snapp has prayed and obtained an appeal to the Supreme Court without a Supersedeas; Now, if the said Appellant shall well and truly prosecute this appeal to effect in the Supreme Court and pay any court costs and costs of appeal which may be assessed against him then this obligation to be void, otherwise, to remain in full force and effect.

Sgt. Jesse E. Snapp, Principal.

Fidelity and Deposit Company of Maryland, Surety,
By: (Signature illegible), Attorney in Fact.

[fol. 45] [File endorsement omitted]

IN THE CHANCERY COURT OF COPIAH COUNTY, MISSISSIPPI

No. 15,670

[Title omitted]

ENTRY OF APPEARANCE—Filed November 14, 1963

I, Joe T. Patterson, Attorney General, Attorney for the Appellees, in the above styled cause, do hereby waive the service of Citation to the Supreme Court of the State of Mississippi in said Cause and enter my appearance in said Supreme Court of the State of Mississippi.

This 13th day of November, A.D., 1963.

Joe T. Patterson, Atty. for Appellees, by Martin R. McLendon, Assistant Attorney General.

[fol. 46]

IN THE CHANCERY COURT OF COPIAH COUNTY, MISSISSIPPI

CLERK'S CERTIFICATE

STATE OF MISSISSIPPI
COUNTY OF COPIAH

I, Boyd Mullen, Clerk of the Chancery Court in and for the jurisdiction aforesaid, do hereby certify that the foregoing is a true and correct transcript of the records in Cause No. 15,670, Styled: Sgt. Jesse E. Snapp vs. W. D. Neal, State Auditor, et al., as the same appears of record and on file in my office at Hazlehurst, Mississippi.

Given under my hand and the seal of said Court on this the 21st day of November, 1963.

Boyd Mullen, Chancery Clerk, By: Irene Pevey, D. C.

TRANSCRIPT FEES:

Clerk—Section 3934
(Miss. Code of 1942, as amended
by H. B. 433 in 1948).

13,160 words at 25¢ per 100	$32.90
3 Photo Copies at $1.00 each	3.00
Binding Fee to Clerk of Supreme Court	1.00
Bond	1.00
Certificate	.50
Total Clerk	$38.40

Reporters Transcript: *None*
WHICH HAS NOT BEEN PAID

[fol. 48] Clerk's Certificate to foregoing transcript (omitted in printing).
[fol. 49]
STATE OF MISSISSIPPI
COUNTY OF COPIAH

I, Mrs. Ann B. Mullen, Chancery Clerk of State and County aforesaid, do hereby certify that Appeal to the Supreme Court of the State of Mississippi in Cause No. 15,670, Styled: Sgt. Jesse E. Snapp, Petitioner vs. W. D. Neal, et al., was orally requested in open Court on the 13th day of August, A.D., 1963 and heard, and Final Decree of our Court entered on same date. Said Petition for Appeal and Review being referred to in said Final Order, a copy of which is attached hereto.

Given under my hand and seal of office, this 12th day of March, A.D., 1965.

Mrs. Ann B. Mullen, Chancery Clerk, By: Irene Pevey, Deputy Clerk.

[SEAL]

[Stamp—Received Mar. 23, 1965—Office of the Clerk, Supreme Court, U. S.]

[fol. 50] [Clerk's Note: "Final Order—August 13, 1963" is omitted from the record here. It appears on page 40, supra.]

[fol. 52]

IN THE SUPREME COURT OF MISSISSIPPI

No. 43,086

2975

SGT. JESSE E. SNAPP,

v.

Honorable W. D. NEAL, State Auditor of Public Accounts, State of Mississippi and Honorable JOE T. PATTERSON, Attorney General of the State of Mississippi.

OPINION—June 1, 1964

BRADY, *Justice*:

This is an appeal by Sgt. Jesse E. Snapp under and by virtue of Section 1147.2, Mississippi Code of 1942, recompiled, from the final order and decree of the Chancery Court of Copiah County, Mississippi, filed August 14, 1963. The notice of appeal was filed on November 1, 1963. The appellant, under Sec. 9979, Vol. 7A Miss. Code of 1942, instituted the proceedings below to review the disapproval by the State Auditor of Public Accounts and the Attorney General of the State of Mississippi of his application for refund of taxes paid by him on his house trailer. On December 28, 1962, the appellant paid to the Sheriff and Tax Collector of Copiah County, Mississippi, under protest, the exiguous sum of $38.50 in payment of the assessment and levy made on his house trailer under House Bill No. 747, Chap. 535, General Laws of Mississippi (1962). The appellant filed an application for a refund, and on April 4, 1963, the attorney general disapproved it. The state auditor gave notice of the denial of his application on April [fol. 53] 5, 1963. On June 26, 1963, the appellant filed a petition for appeal and review of the denial of his application for refund in the Chancery Court of Copiah County,

Mississippi. On August 13, 1963, the chancellor entered a final order decreeing that the action of the attorney general in disapproving the application be affirmed for the reasons set forth in the opinion of the attorney general in entering judgment against the appellant for costs. From this decree the appellant has appealed to this Court.

The record discloses the following facts:

Since the re-entry of the appellant on October 29, 1951, into the military service, he has been a resident and domiciliary of Pacolet, South Carolina; he is a registered voter there and his relatives are residents of and are domiciled in South Carolina, and he intends to return to South Carolina on completing his military service. On May 16, 1959, the appellant purchased a house trailer in Greenville, Mississippi. This trailer was moved outside of the city of Greenville, Mississippi, and the appellant resided in this trailer until October, 1961. On October 28, 1961, he became an active member of the United States Air Force and was stationed at Crystal Springs, Mississippi. He was assigned as a permanent party, subject to duty elsewhere. His presence in Mississippi is simply in compliance with his military orders. Since before November 1, 1962, he has lived in his house trailer out from Crystal Springs, Mississippi, at the Sojourner Trailer Court, where he was transferred, as stated, from Greenville, by the Transit Homes, Inc. This trailer was moved over the Mississippi highways and the trailer was parked out from Crystal Springs on privately owned property. The trailer is con- [fol. 54] nected with water, sewerage and electricity, which are detachable. It is now resting on concrete blocks but has wheels and it can be moved over the highways but is not self-propelled. This trailer was not registered on November 1, 1962, under the laws of South Carolina or under the laws of any other state, and no taxes have been paid to South Carolina or to any other state for any period beginning on or after November 1, 1962. On December 15, 1962, the Sheriff of Copiah County notified appellant that there had been an assessment and levy of taxes on his house trailer under the House Trailer Ad Valorem Tax

Act which were due on or before November 1, 1962, and that the house trailer would be sold if payment was not made by January 1, 1963. On December 28, 1962, as a result of this notice and under protest, appellant paid the sum of $38.50. On February 4, 1963, an application for a refund of the tax paid and interest was made. On April 5, 1963, the application for the refund of the tax was denied by the attorney general by proper notice, and notice was also given by the state auditor, W. D. Neal, that the application had been denied. On June 26, 1963, petition to review the disallowance of refund was filed in the Chancery Court of Copiah County, Mississippi. On June 28, 1963, the chancellor ordered the state auditor to transmit to the court a certified copy of the record, which was done. On August 13, 1963, after examining the record and hearing oral arguments of counsel, the chancellor entered the final order affirming the action of the attorney general and disapproving appellant's application for refund and entering a judgment against the appellant for costs. It is from this decree and order that this appeal is prosecuted to this Court.

[fol. 55] The basic issue presented by this appeal is whether the chancellor erred in holding that the ad valorem taxes imposed on appellant's house trailer were not barred by Section 574 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended. This question necessarily involves other related questions which will be taken up in appropriate order.

(I) It is the argument of the appellant that under Section 574 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, the situs for taxation of the personal property of a nonresident serviceman is in his state of residence or domicile. Dameron v. Brodhead, 345 U. S. 322; United States v. Arlington County, Commonwealth of Virginia, 326 F. 2d 929 (C. A. 4th); Biennial Report of the Attorney General of Mississippi (1957-1959), pp. 99-100; H. Rep. No. 2198, 77th Cong., 2d Sess., p. 6; H. Rep. No. 1514, 78th Cong., 2d Sess., p. 2.

(II) The appellant further contends that the proviso in Section 574(2) is inapplicable because the taxes levied upon the house trailer of the appellant were ad valorem personal property taxes, not motor vehicle licenses, fees, or excises.

(III) The appellant further contends that the proviso in Section 574(2) is inapplicable because the appellant did not fail to pay the motor vehicle licenses, fees, or excises levied on his house trailer by his state of residence or domicile, since South Carolina had not imposed any such license, fee, or excise on his house trailer.

(IV) The appellant urges that the proviso in Section 574(2) is inapplicable because the appellant's house trailer was not a motor vehicle as that term is used in Section 574(2).

[fol. 56] In order to resolve the basic questions in issue, it is necessary that we review that portion of 50 U. S. Code, App. 574, which has application, and which is as follows:

"(1) For the purposes of taxation in respect of any person, or of his personal property, . . . by any State, . . . such person shall not be deemed (a) to have lost a residence or domicile in any State, . . . solely by reason of being absent therefrom in compliance with military or naval orders, or (b) to have acquired a residence or domicile in any other State, . . . while, and solely by reason of being so absent. For the purposes of taxation in respect of the personal property, . . . of any such person by any State, . . . of which such person is not a resident or in which he is not domiciled, . . . *and personal property shall not be deemed to be located or present in or to have a situs for taxation in such State,* . . . (Parenthesis (a) and (b) ours.)

"(2) When used in this section, (a) the term 'personal property' shall include *tangible* and *intangible property* (including *motor vehicles*), and (b) the term 'taxation' shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles or the use thereof:

PROVIDED, That the license, fee, or excise required by the State, . . . of which the person is a resident or in which he is domiciled has been paid." (Emphasis ours.)

It can be conceded, we think, that Section 574 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, bars the imposition by any state and its political subdivisions of ad valorem personal property taxes on personal [fol. 57] property owned by a nonresident serviceman. It should be noted, also, however, that there is an exception to this general prohibition and that the federal statute in question does not grant a complete exemption from taxation, but it does create a legal fiction that personal property of a serviceman shall not be deemed to have lost its situs in his home state and acquired a situs where he is in fact physically located as regards all other items of personal property, except motor vehicles. The legal fiction thus created is a bar to taxation by another state other than the state of the domicile of the serviceman, which was set forth in Dameron v. Brodhead, 345 U. S. 322, 97 L. Ed. 1041. It is to be noted, however, that the exception in the statute itself provides that in order for the legal fiction to be effective, insofar as motor vehicles are concerned, the serviceman must have paid certain taxes in the state in which he is a resident or is domiciled. The exact language is:

"PROVIDED, That the license, fee, or excise required by the State, . . . of which the person is a resident or in which he is domiciled *has been paid* . . ." (Emphasis ours.)

The appellant contends that provision (2) of Sec. 574 is inapplicable because appellant's house trailer was not a motor vehicle as that term is construed and used in provision (2) of Sec. 574. It is to be noted that Congress did not undertake to define motor vehicle when it enacted 50 U.S.C.A., App. 574. Therefore, it should follow that it is logical to apply the definition of the words as used in other federal statutes, to-wit: Title 40, U.S.C.A. 472(1) quotes:

[fol. 58] "The term 'motor vehicle' means any vehicle, self-propelled *or drawn by mechanical power*, . . ." (Emphasis ours.)

Title 49, U.S.C.A. 303(13) reads as follows:

"The term 'motor vehicle' means any vehicle, machine, tractor, trailer, or semitrailer propelled *or drawn by mechanical power* and used upon the highways in the transportation of passengers or property, . . ." (Emphasis ours.)

In 18 U.S.C.A. 31, we find this definition:

"'Motor vehicle' means every description of carriage or other contrivance propelled or drawn by mechanical power and used for commercial purposes . . . in the transportation of passengers, or passengers and property; . . ."

Since 50 U.S.C.A., App. 574, does not attempt to define the meaning of "motor vehicle", any one of these federal statutes can be used to supply the definition of "house trailer" as being included within the words "motor vehicle", and thus clearly refutes the narrow dictionary definition limiting "motor vehicles" to those that are self-propelled, as urged by the appellant. Mathison v. Brister, 166 Miss. 67, 145 So. 358. Our own statutes, which have definitions relating to motor vehicles, leave no doubt that this definition does include "house trailers". Mississippi's definitions are also controlling upon the courts of the United States by reason of the provisions of 28 U.S.C.A. 1652, which is as follows:

"The laws of the several states, except where the Constitution or treaties of the United States or Acts of Con-
[fol. 59] gress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States, in cases where they apply."

Therefore, since the Act of Congress, 50 U.S.C.A., App. 574, does not provide a definition for "motor vehicles",

the Mississippi definition of the words to include "house trailers" is conclusive and binding upon both this Court and the federal courts. Furthermore, Sec. 3 of Chap. 588, Laws of 1958, the definition section, appearing as Sec. 10007-03 Miss Code of 1942, Rec., provides in part:

"The subject words and terms of this section for the purpose of this Act, shall have meanings as follows:

"(a) The term *'motor vehicle' shall mean any device* and attachments supported by one or more wheels *which is propelled or drawn by any power,* other than muscular power, over the highways, streets, or alleys of this state." (Emphasis ours.)

Sec. 2, Chap. 535 of the Laws of 1962, the definition section, appearing as Sec. 10007-52, Miss. Code of 1942, Rec., provides in part:

"The subject words and terms of this section, for the purposes of this act, shall have meanings as follows:

"(a) The term 'house trailer' shall mean and include any trailer-type vehicle or mobile home, designed and constructed so as to be suitable for use for domestic, commercial, or industrial purposes, and which is constructed so that it may be moved from place to place over the highways and streets by being supported by two (2) or more wheels, and drawn or moved by motive power *not its own,* and which house trailer is not taxed under authority of chapter 588, laws of 1958." (Emphasis ours.)

[fol. 60] The appellant concedes that the house trailer is included within the above definition which is pari materia with chapter 588, supra, which by definition also includes his house trailer. It is to be noted that notwithstanding the inclusion of his house trailer within the terms of both the statutes quoted above, appellant has not registered the house trailer or paid any tax thereon during the period of his ownership of the trailer, although it has been drawn along the highways of this state whenever the need arose and is readily capable of being drawn along

the highways of this state whenever the need arises again, or whenever the appellant desires to do so. We think, therefore, that the fourth contention of the appellant, that his house trailer was not a motor vehicle as that term is used in Sec. 574(2), is not well taken, nor do we believe that his third contention, that Sec. 574(2) is inapplicable because the appellant did not fail to pay the motor vehicle license fees and excises levied on his house trailer by his state of residence or domicile since South Carolina had not imposed any such license fee, or excise on his house trailer. The invalidity of contentions (II) and (I) will be hereinafter shown. We assert that it is clear that this section of the act contemplates that the personal property, which is exempt provided a license fee or excise is paid to the state in which the appellant resides, will be located in said state or that said state will have such jurisdiction or control over the trailer or motor vehicle that the license, fee or tax or excise which is due and owing will be paid. It can scarcely be conceded that a legal fiction can give a state the right to tax nonexistent property, that is, property which has never been within the jurisdiction of the state. In order for a [fol. 61] state to require the payment of a license or fee or excise on property, the property must be located in the state, or must have been used in the state, and must have become subject to the operation of the state laws involved. The appellant's house trailer here has never been out of the state of Mississippi. It was purchased in this state, has remained in this state, traveled the highways of this state, and has never been in the state of South Carolina. While South Carolina does not require a license fee or excise on his house trailer, still the second paragraph of Sec. 574 of Title 50 U.S.C.A., App., clearly stipulates that the legal fiction created in the first paragraph will not and shall not apply to motor vehicles *unless the serviceman has in fact paid the license fee or excise required by the state in which he is domiciled.* This exception to the blanket immunity granted in the first paragraph shows that the clear and un-

mistakable congressional intent was that the motor vehicles of servicemen should be registered according to the laws of the state of his residence, or of some state, regardless of where they may be located, and this is true even though perhaps a license, fee or excise on the trailer is not required by that state. It does not excuse the serviceman from registering the trailer in his home state. Code of South Carolina of 1962, Sec. 46-2(13) provides as follows:

"(13) TRAILER: Every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle; . . . "

Sec. 46-11 provides:

"VEHICLES REQUIRED TO BE REGISTERED AND LICENSED.—Every motor vehicle, trailer, semitrailer, pole trailer and [fol. 62] special mobile equipment vehicle driven, operated or moved upon a highway in this State *shall be registered and licensed in accordance with the provisions of this chapter.* It shall be a misdemeanor for any person to drive, operate or move upon a highway or for the owner knowingly to permit to be driven, operated or moved upon a highway any such vehicle which is not registered and licensed and the required fee paid as provided for in this chapter." (Emphasis ours.)

Section 46-35.3 provides:

"FEES FOR HOUSE TRAILERS.—For every house trailer, the annual fee shall be six dollars. The Department shall classify as a 'house trailer' every trailer or semitrailer which is designed, constructed and equipped as a dwelling, living abode, or sleeping place, either permanently or temporarily, and is equipped for use as a conveyance on streets or highways, or a trailer or semitrailer of similar nature whose chassis and exterior shell is designed and

constructed for use either permanently or temporarily for advertising, sales, display or promotion of merchandise or services or for any other commercial purpose, except the transportation of property for hire or the transportation of property for distribution by a private carrier. The Department may not license and register a house trailer which exceeds the permissible size limitations prescribed in Sections 46-654, 46-657 and 46-657.1, but such house trailers which may be permitted to be moved over the highways by the Department under special permits issued pursuant to Section 46-667 to 46-667.3 shall pay to the Department a fee of five dollars per trip."

It is apparent, therefore, that the state wherein appellant claims to be domiciled, namely, South Carolina, [fol. 63] does, in fact, require the registration of the house trailer as a motor vehicle. Assuming the operation of the legal fiction, then this requirement of the laws of South Carolina has not been complied with in any way by the appellant. Appellant further admits that the statutes quoted above require the registration of his house trailer in South Carolina if it, in fact, was physically located in the state. He asserts that the statutes of the state in which he is domiciled do not apply because the house trailer was, in fact, located in Mississippi during the entire taxing period, and then paradoxically he seeks to have this Court void the collection of the tax by Mississippi because the provisions of 50 U.S.C.A., App. 574, provide that the legal status of the house trailer for tax purposes is in South Carolina. It is the reasoning which was urged in the case of *Whiting* v. *City of Portsmouth,* 202 Va. 609, 118 S. E. 2d 505, wherein the Supreme Court of Virginia rejected this theory. Accordingly, this theory is rejected by this Court.

In passing, all the appellant had to do to avoid the tax in question in Mississippi was to register his motor vehicle in Mississippi under the laws specifically granting him the tax exemption. This the appellant neglected or refused to do. Chapter 588, Laws of 1958, was passed by the Mississippi Legislature to implement the amendment

of Section 112 to the Mississippi Constitution of 1890, and to thereby provide a special method of assessment and collection of taxes on motor vehicles. In recognition of the federal statutes, Sec. 574, supra, and the legal fiction created thereby, the legislature in enacting Chap. 588, supra, provided in Sec. 21 thereof, that:

"Any motor vehicle driven over the highways of this [fol. 64] state to the extent that the owner of such motor vehicle is required to purchase a road and bridge privilege license in this state, yet the legal situs of such motor vehicle is located in another state, shall be exempt from ad valorem taxes authorized by this act."

Upon proper inquiry the office of the appellee, the Attorney General, held on July 11, 1958, that such vehicles were not liable for ad valorem taxes provided they were registered in this state. The opinion is published in the biennial report of the Attorney General of Mississippi, 1957-1959, on pages 99 and 100, and provides as follows:

"TAXES—EXEMPTIONS: Members of the armed forces are not liable for ad valorem taxes on personally owned automobiles not used in business.

"By: McLendon, Assistant

"July 11, 1958

"This is in reply to yours of July 2, 1958, wherein you ask whether or not personal automobiles of members of the armed forces stationed in your city are exempt from state, county, and municipal ad valorem taxes whether the tag is bought in this state or another state.

"Section 574, Title 50, U.S.C.A. provides that when a member of the armed forces is in any state in compliance with military or naval orders his ' . . . personal property shall not be deemed to be located or present in or to have status for taxes in such state . . .' Sec. 21 of H. B. No. 3, of the Regular Session of 1958, provides 'Any motor vehicle driven over the highways of this state to

the extent that the owner of such motor vehicle is required to purchase a road and bridge privilege license in that state, yet the legal situs of such motor vehicle is [fol. 65] located in another state, shall be exempt from ad valorem taxes authorized by this act.'

"It is, therefore, the opinion of this office that members of the armed forces of the United States who are nonresidents of the State of Mississippi and who are residing in your community in compliance with military or naval orders are exempt from the payment of ad valorem taxes imposed by H. B. No. 3, supra, whether they pay the road and bridge privilege license tax and purchase their license plates in Mississippi or not, provided the automobile in question is not used in any way for a trade or business."

The appellant, therefore, notwithstanding the specific requirements of the federal act that motor vehicles be registered in the state of the domicile of the serviceman in order to be entitled to tax immunity and the specific provisions of the law of South Carolina that the house trailer be registered in that state, appellant proceeded to operate the house trailer on the highways of Mississippi whenever the need arose. He, also, failed and refused to register his house trailer under the Mississippi act specifically granting to him an ad valorem tax exemption, and which such registration would have specifically granted to him an exemption from the tax paid in this case, Sec. 10007-58(a), Miss. Code of 1942, Rec.

We feel, therefore, that this appellant has deliberately avoided or more properly has waived any and all claims to tax immunity that he might have heretofore enjoyed. This is, of course, an ad valorem tax, the statute so provides it, and makes the payment of the ad valorem tax a condition precedent to the registration of the motor vehicle. This the appellant could have avoided had he complied [fol. 66] with the laws of the state of South Carolina, the laws of the state of Mississippi, and the federal laws pertaining thereto. Section 574 of 50 U.S.C.A. does not prohibit the levy of an ad valorem tax on motor vehicles un-

less the serviceman claiming the tax immunity has complied with the laws of the state of his domicile. This the appellant has clearly failed to do. The second paragraph of Sec. 574 provides specifically:

" . . . (b) the term 'taxation' shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles or the use thereof: PROVIDED, That the license, fee, or excise required by the State, Territory, possession, or District of Columbia of which the person is a resident or in which he is domiciled has been paid."

By stipulating expressly that the taxation should not be limited to privilege and excise taxes, it necessarily follows that the prohibited tax must include the only other general branch of taxation, that is, ad valorem. It is emphasized that the federal statute is meant to include ad valorem taxes as being one of the taxes for which the serviceman is *immune, provided he complies with the laws of his home state concerning registration of the motor vehicle.* If he fails to so comply, as was done in this case at bar, he is no longer entitled to protection of the Act of Congress. The failure of the appellant here to comply with the federal law, the law of his home state of South Carolina, or the law of the state of Mississippi, in which he has been residing for the past several years, granting him an ad valorem tax exemption, we feel that by his acts in this regard he has waived his right or claim of any nature which he may have had insofar as exemption from [fol. 67] taxation is concerned.

"One who claims exemption from taxation has the burden to show that all the conditions on which the exemption was based have been at all times fulfilled." Yazoo & M. V. Railroad Co. v. Adams, 81 Miss. 90, 32 So. 937.

" . . . one claiming exemption from taxation has the burden of showing that the claim comes clearly within the exemption law, unaffected by other statutes which clearly renders the property subject to a lien for the assessment . . . " Willis Creek Drainage Dist. v. Yazoo County, 209 Miss. 849, 48 So. 2d 498.

" . . . when anyone is claiming the benefit of an exception under a statute, the proof must be clear that the one claiming the benefit of an exception comes clearly within the same." Trunkline Gas Co. v. Mississippi State Tax Commission, 238 Miss. 591, 119 So. 2d 378.

"Exemptions from taxation are strictly construed, and never presumed, and person claiming exemption had burden to establish his right thereto." Jackson Fertilizer Co. v. Stone, 173 Miss. 183, 162 So. 170.

In 84 C. J. S., Taxation, Sec. 224, p. 431, we find:

"One entitled to the benefit of a grant of exemption must in some way manifest his acceptance of the grant, in order to obtain immunity under it, and in particular must comply with all valid and reasonable conditions imposed by statute; and the same rule applies to a statute commuting taxes or providing for the payment of a gross-earnings tax or other special tax in lieu of general taxation. Such conditions include the planting of forest trees on the exempted land, or the making of a list or return of one's property to the assessors, or the filing of an [fol. 68] affidavit, such as an affidavit with respect to the value of the property for which an exemption is claimed."

Section 225 of the same work provides:

"Since taxation is the rule and exemption is the exception, and since exemptions from taxation are not favored, the general rule is that a grant of exemption from taxation is never presumed. On the contrary, since the relinquishment of the power to tax is never presumed, . . . the presumption is against exemption from taxation and in all cases of doubt as to the legislative intention, or as to the inclusion of particular property within the terms of the statute, the presumption is in favor of the taxing power, and the burden is on claimant to prove or establish clearly his right to the exemption, bringing himself clearly within the terms of such conditions as the statute may impose. Accordingly, one claiming in any form of action or

proceeding that his property is exempt from taxation must offer in proof facts and circumstances in support of his claim."

Appellant has obviously made no attempt to comply with the federal act granting him a right to tax exemption by registering his house trailer in the state in which he claims he is domiciled. In fact, to the opposite, he argues in this case that such registration by his state is not required. It is obvious, also, that he has failed to take advantage of the opportunity to register the house trailer in Mississippi under statutes specifically granting to him an ad valorem tax exemption, and he bases and predicates his failure to do so on the ground that such registration was not required because the house trailer was not drawn along the highways. This argument is of no merit because of the undisputed facts, admitted by the appellant through [fol. 69] his attorney, that the house trailer has been drawn over the highways of this state. It appears, therefore, that paragraph 1 of Sec. 574, insofar as the situs for taxation of personal property of a nonresident serviceman being in his state of residence or domicile is concerned, is not involved in the case at bar, since the case at bar is involved under provision 2 of Sec. 574, which is the exception to the general rule and which requires that the serviceman comply with the conditions of Sec. 2 before exemption from taxation is permissible in a state other than the state of his domicile.

In conclusion, the state of Mississippi has a right, recognized by Congress, to require the registration of all motor vehicles that use, or are capable of using, the public highways of this state. This authority does not abridge the rights of citizens to equal protection granted by the Fourteenth Amendment to the United States Constitution. Kane v. New Jersey, 242 U. S. 160, 61 L. Ed. 222; Hendrick v. Maryland, 235 U. S. 610, 59 L. Ed. 385; Blashfield, Cyclopedia of Automobiles & Practice, Vol. 1, pp. 470-473; Roberts v. Federal Land Bank of N. O., 189 Miss. 989, 196 So. 763; State v. Lawrence, 108 Miss. 291,

66 So. 745; Ann. Cas. 1917E, 322; Title 50 U.S.C.A., App., Sec. 574.

The registration of motor vehicles by the owners thereof is one of the most important safeguards which a state can have in operating its internal affairs and in maintaining peace and order. We do not believe that Congress intended by enactment or extension of the Soldiers' and Sailors' Civil Relief Act of 1940 to rob the states of their right to require registration of motor vehicles or to abolish the taxation thereof, which will happen here if the appellant's contention is to prevail. The act does not grant [fol. 70] unto the appellant immunity from all taxation or make him, because of his military service connection, a tax untouchable, which is substantially what the appellant claims. It is evident that the intention of the Congress in extending the life of the Soldiers' and Sailors' Relief Act of 1940 was not to exempt members of the armed services from all motor registration and taxation laws, giving them federal esoteric immunity from these taxes reserved to the states, but to prevent multiplicity of tax assessments against the soldiers and sailors by the states into which they are required to reside, or duplicity of tax payments. Having failed to avail himself of the exemption granted by the federal statutes, or the statutes of the state of South Carolina or the state of Mississippi, it follows that the learned chancellor was correct in holding that the appellant was liable for the tax on his house trailer, and the decree of the Chancery Court of Copiah County denying the application of the appellant for a tax refund is affirmed.

Affirmed.

Kyle, P.J., and Ethridge, Rodgers and Patterson, JJ., concur.

[fol. 71] Clerk's Certificate to foregoing paper (omitted in printing).

[fol. 72]

IN THE SUPREME COURT OF MISSISSIPPI

State of Mississippi

To the Honorable the Chancery Court, of Copiah County —Greetings:

Whereas, on the 1st day of June, 1964 (the same being a day of the regular term of our Supreme Court, begun and held in the Court room, in the Capitol, in the City of Jackson, in said State, on the 1st Monday of March, in the year of our Lord, 1964, the following final decree was rendered by our Supreme Court, to-wit:

No. 43,086

SGT. JESSE E. SNAPP,

vs.

W. D. NEAL, State Auditor, et al.

JUDGMENT—June 1, 1964

This cause having been submitted at a former day of this Term on the record herein from the Chancery Court of Copiah County, and this Court having sufficiently examined and considered the same and being of the opinion that there is no error therein doth order and adjudge and decree that the decree of said Chancery Court rendered in this cause on the 13th day of August, 1963—be and the same is hereby affirmed. It is further ordered and adjudged and decreed that the appellees do have and recover of and from the appellant and Fidelity and Deposit Company of Maryland, surety on the appeal bond herein, all of the costs of this appeal to be taxed, for which let proper process issue.

(Minute Book "BN", page 181)

You Are Therefore Hereby Commanded, That such execution and further proceedings be had in said cause, as according to right and justice, and the judgment of our Supreme Court and the law of the land ought to be had.

Witness, the Hon. Percy M. Lee, Chief Justice of our Supreme Court; also the signature of the Clerk and the Seal of said Court hereunto affixed, at office, at Jackson, this the 9th day of March, A.D., 1965, Julia H. Kendrick, Clerk, By Yvonne Burnham, D.C.

(Seal)

[fol. 73] Clerk's Certificate to foregoing paper (omitted in printing).

[fol. 74]

SUPREME COURT OF THE UNITED STATES

No. ....., October Term, 1964

SGT. JESSE E. SNAPP, Petitioner,

vs.

NEAL, et al.

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI—August 28, 1964

Upon Consideration of the application of counsel for petitioner,

It Is Ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including Sept. 30, 1964.

Hugo L. Black, Associate Justice of the Supreme Court of the United States.

Dated this 28th day of August, 1964.

[fol. 75]

SUPREME COURT OF THE UNITED STATES

No. ....., October Term, 1964

SGT. JESSE E. SNAPP, Petitioner,

vs.

NEAL, et al.

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI—October 1, 1964

Upon Consideration of the application of counsel for petitioner,

It Is Ordered that the time for filing a petition for writ of certiorari in the above-entitled case be, and the same is hereby, further extended to and including October 29, 1964.

Hugo L. Black, Associate Justice of the Supreme Court of the United States.

Dated this 1st day of October, 1964.

[fol. 76]

SUPREME COURT OF THE UNITED STATES

No. 632—October Term, 1964

SGT. JESSE E. SNAPP, Petitioner,

v.

HONORABLE W. D. NEAL, State Auditor, et al.

ORDER ALLOWING CERTIORARI—March 8, 1965

The petition herein for a writ of certiorari to the Supreme Court of the State of Mississippi is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1964

NO.

SGT. JESSE E. SNAPP,
Petitioner

vs.

HONORABLE W. D. NEAL, State Auditor, and
HONORABLE JOE T. PATTERSON, Attorney General,
both of the State of Mississippi,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI.

Petitioner, Sgt. Jesse E. Snapp, an airman on active duty with the USAF, prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Mississippi entered in the above entitled case upholding the judgment of the trial court in favor of respondents and dismissing petitioner's application for an appeal and review.

CITATION OF OPINIONS BELOW

The opinion of the Supreme Court of Mississippi is reported in 164 So.2d 752 and a copy is reproduced herein as Appendix A.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C., section 1257(3). The opinion and judgment of the Supreme Court of Mississippi was rendered on June 1, 1964. The decision of the Supreme Court of Mississippi is final. On August 28, 1964, Mr. Justice Black extended the time for filing a petition for certiorari to and including September 30, 1964. On October 1, 1964, Mr. Justice Black signed an order further extending the time for filing a petition for writ of certiorari in this matter to and including October 29, 1964.

QUESTIONS PRESENTED

1. Does the Soldiers' & Sailors' Civil Relief Act of 1940 as Amended (50 U.S.C. App. 574) prohibit a state from imposing an ad valorem tax on personal property under the following circumstances:

A member of the Armed Service on active duty in the taxing state, which is not his residence, owns a house trailer located in the taxing state which trailer however, has never moved or used the State highways during the taxable year.

2. Alternatively, is a house trailer a motor vehicle within the meaning of the second paragraph of 50 U.S.C. App. 574, under the circumstances stated in paragraph 1 hereof?

3. If a house trailer is a motor vehicle within the meaning of the second paragraph of 50 U.S.C. App. 574, then does the proviso of the second paragraph apply when the State of the taxpayer's residence does not

require a payment of a tax of any sort unless the vehicle operates or moves on the highways of that State?

4. Does the decision of the Supreme Court of Mississippi in this case either misconstrue, misinterpret or ignore the basic reasoning of *Dameron v. Brodhead*, 345 U.S. 322 (1953)?

STATUTES INVOLVED

The statutory provisions involved are: the Soldiers' & Sailors' Civil Relief Act of 1940 as amended (50 U.S.C. App. 574); the several Mississippi statutes dealing with ad valorem taxes generally, including ad valorem taxes on motor vehicles and ad valorem taxes on house trailers; and the statutes of South Carolina relative to registration and licensing of motor vehicles and house trailers. The texts of these statutes are to be found in Appendix B, infra.

STATEMENT OF THE CASE

With the exceptions hereinafter noted, petitioner adopts as a fair statement of the facts of the case, the version contained in the opinion of the Supreme Court of Mississippi (see Appendix A) which reads as follows:

> "Since the re-entry of the appellant on October 29, 1951, into the military service, he has been a resident and domiciliary of Pacolet, South Carolina; he is a registered voter there and his relatives are residents of and are domiciled in South Carolina, and he intends to return to South Carolina on completing his military service. On May 16, 1959, the appellant pur-

chased a house trailer in Greenville, Mississippi. This trailer was moved outside of the city of Greenville, Mississippi, and the appellant resided in this trailer until October, 1961. On October 28, 1961, he became an active member of the United States Air Force and was stationed at Crystal Springs, Mississippi. He was assigned as a permanent party, subject to duty elsewhere. His presence in Mississippi is simply in compliance with his military orders. Since before November 1, 1962, he has lived in his house trailer out from Crystal Springs, Mississippi, at the Sojourner Trailer Court, where he was transferred, as stated, from Greenville, by the Transit Homes, Inc. This trailer was moved over the Mississippi highways and the trailer was parked out from Crystal Springs on privately owned property. The trailer is connected with water, sewerage and electricity, which are detachable. It is now resting on concrete blocks but has wheels and it can be moved over the highways but is not self-propelled. This trailer was not registered on November 1, 1962, under the laws of South Carolina or under the laws of any other state, and no taxes have been paid to South Carolina or to any other state for any period beginning on or after November 1, 1962. On December 15, 1962, the Sheriff of Copiah County notified appellant that there had been an assessment and levy of taxes on his house trailer under the House Trailer Ad Valorem Tax Act which were due on or before November 1, 1962, and that the house trailer would

be sold if payment was not made by January 1, 1963. On December 28, 1962, as a result of this notice and under protest, appellant paid the sum of $38.50. On February 4, 1963 an application for a refund of the tax paid and interest was made. On April 5, 1963, the application for the refund of the tax was denied by the attorney general by proper notice, and notice was also given by the state auditor, W. D. Neal, that the application had been denied. On June 26, 1963, petition to review the disallowance of refund was filed in the Chancery Court of Copiah County, Mississippi. On June 28, 1963, the chancellor ordered the state auditor to transmit to the court a certified copy of the record, which was done. On August 13, 1963, after examining the record and hearing oral arguments of counsel, the chancellor entered the final order affirming the action of the attorney general and disapproving appellant's application for refund and entering a judgment against the appellant for costs. It is from this decree and order that this appeal is prosecuted to this Court.

The basic issue presented by this appeal is whether the chancellor erred in holding that the ad valorem taxes imposed on appellant's house trailer were not barred by Section 574 of the Soldiers' & Sailors' Civil Relief Act of 1940, as amended. This question necessarily involves other related questions which will be taken up in appropriate order."

Petitioner wishes to clarify the statement made by the Supreme Court of Mississippi to the effect that "on October 28, 1961, he became an active member of the United States Air Force". The record in the Supreme Court of Mississippi shows that petitioner "re-enlisted" for a further term of duty on October 28, 1961 and it is therefore wrong to say that he "became" a member of the Air Force on that date. (See pages 16-17, Record No. 43086, Supreme Court of the State of Mississippi in the matter entitled Sgt. Jesse E. Snapp vs. W. D. Neal, State Auditor, et al.)

Further, petitioner wishes to point out three facts which are omitted in the statement of facts of the Supreme Court of Mississippi quoted above, to wit:

1. On December 28, 1962 when petitioner paid the tax on the house trailer demanded of him, he did so under protest. (See page 26 of Record No. 43086, Supreme Court of the State of Mississippi, in the matter entitled Sgt. Jesse E. Snapp vs. W. D. Neal, State Auditor, et al.)

2. On February 3, 1963 when petitioner filed his application for a refund as required by Mississippi law, he invoked the benefit and protection of the Soldiers' & Sailors' Civil Relief Act of 1940 (see page 16-19 of Record No. 43086, Supreme Court of Mississippi, in the matter entitled Sgt. Jesse E. Snapp vs. W. D. Neal, State Auditor, et al.). Petitioner's application was denied and this was based on an opinion of the attorney General of Mississippi to the effect that petitioner was not entitled to the immunity provided by 50 U.S.C. App. 574.

3. On June 23, 1963 when petitioner filed for an appeal and review in the chancery court of Copiah County, Mississippi, he again invoked the benefit and protection of the Soldiers' & Sailors' Civil Relief Act. (See pages 3-5 of Record No. 43086 of the Supreme Court of the State of Mississippi, in the matter entitled Sgt. Jesse E. Snapp vs. W. D. Neal, State Auditor, et al.) The Chancellor upheld the Attorney General and adopted his opinion.

The federal question relied upon by petitioner from the start was considered and construed by the Supreme Court of Mississippi and the decision of that court is based upon its interpretation of that federal statute. Thus, this is a matter squarely within the provisions of 28 U.S.C. 1257(3) because it is a case in which, at *all stages*, petitioner has asserted and been denied a privilege and immunity granted to him by a federal statute.

REASONS FOR GRANTING THE WRIT

The taxing authorities of the State of Mississippi, the Attorney General of the State of Mississippi, and the Courts of Mississippi, including the Supreme Court of that State, have misinterpreted and misconstrued a federal statute granting a privilege and immunity to petitioner, to wit: the Soldiers' & Sailors' Civil Relief Act of 1940, as amended, (50 U.S.C. App. 574) so that petitioner has been denied the privilege and immunity granted to him by that statute.

Moreover, the public officials and the courts of the State of Mississippi have interpreted and construed that statute in a manner which is contrary to an in-

terpretation of the same statute made by the Supreme Court of the United States in the case of *Dameron vs. Brodhead*, 345 U.S. 322 (1953).

I.

THE TAX IMPOSED BY MISSISSIPPI ON HOUSE TRAILERS IS AN AD VALOREM TAX, PURELY AND SIMPLY AND AS SUCH IS PROHIBITED BY 50 U.S.C. App. 574(1).

Section 574 provides in pertinent part that (1) for the purposes of taxation in respect of any person, or of his personal property, income, or gross income, by any state or political subdivision, such person shall not be deemed (a) to have lost a residence or domicile in any state or political subdivision "solely by reason of being absent therefrom in compliance with military or naval orders," or (b) "to have acquired a residence or domicile in * * * any other State * * * or political subdivision * * * while, and solely by reason of being, so absent," and (2) that "For the purposes of taxation in respect of the personal property" of any such person by any state or political subdivision of which such person is not a resident or domiciliary, "personal property shall not be deemed to be located or present in or to have a situs for taxation in such State * * * or political subdivision * * *."

This provision clearly sets forth that, when one in the military service is absent from his state of residence or domicile in compliance with military orders, no state other than the state of his residence or domicile may impose a tax on his personal property or income. The concluding clause—that, "For the purposes of taxation in respect of personal property" of a serviceman, "personal property shall not be deemed to be

located or present in or to have a situs for taxation in such State" (i.e., any state other than the state of the serviceman's residence and domicile)—is alone dispositive of this case.

The problem which gave rise to the policy announced in Section 574 was the possible subjection of military personnel serving in several taxing jurisdictions through no choice of their own to the taxation of their property by several states in the same calendar year. H. Rep. No. 2198, 77th Cong., 2d Sess., p. 6; H. Rep. No. 1514, 78th Cong., 2d Sess., p. 2. However, Congress did not limit its policy to situations of *actual* multiple taxation. This problem was considered in *Dameron v. Brodhead*, 345 U.S. 322, where the City of Denver, Colorado, had imposed a tax on the personal property of a United States Air Force officer stationed in Colorado and living in Denver, whose residence and domicile were in Louisiana. In rejecting the contention that the city could tax the officer's personal property because there was no danger of multiple taxation since Louisiana had imposed no taxes on the personal property of its residents, the Supreme Court of the United States explained that (p. 326) —

> "though the evils of potential multiple taxation may have given rise to this provision, Congress appears to have chosen the broader technique of the statute carefully, freeing servicemen from both income and property taxes imposed by any state by virtue of their presence there as a result of military orders. It saved the sole right of taxation to the state of original residence whether or not that state exercised the right. Congress, manifestly, thought that

> compulsory presence in a state should not alter the benefits and burdens of our system of dual federalism during service with the armed forces."

The Supreme Court of the United States also considered the constitutionality of Section 574 in the *Dameron* case, and upheld it as being within the powers delegated to the Congress to wage war and to enact necessary and proper supplementary legislation. The Court also noted that Section 574 in no way affected the reserve powers of the states to tax, since the "statute merely states that the taxable domicile of servicemen shall not be changed by military assignments." 345 U. S., p. 325.

Indeed, the Attorney General has recognized the effect of Section 574. He has ruled that personal automobiles owned by non-resident servicemen stationed in the State of Mississippi are exempt from state, county, and municipal ad valorem taxes imposed under the Motor Vehicle Ad Valorem Tax Act, Sections 10007-04, 10007-21 (Appendix B, *infra.*) Opinion dated July 11, 1958, Biennial Report of the Attorney General of Mississippi (1957-1959), pp. 99-100 (Appendix D, *infra*).

The effect of Section 574 is, therefore, to allocate the personal property of a serviceman to his state of residence or domicile for the purposes of taxation by a state and its political subdivisions. In the instant case, Section 574 bars any state except the State of South Carolina, the state of the appellant's residence and domicile (R. 16-17), from taxing his personal property, such as his house trailer. This result is eminently fair since it obviates the problem of multiple taxation of the property of military personnel who are transferred from

taxing jurisdiction to taxing jurisdiction by military orders; while non-resident servicemen who are serving in the State of Mississippi are immune to taxation of their personal property by that state and its political subdivisions, Mississippi servicemen who are serving in other states are immune to taxation of their personal property except by the State of Mississippi and its political subdivisions.

Respondents and the Supreme Court of Mississippi have fallen into the error of considering that the second paragraph of §574 applies to this case. Petitioner submits that it does not. Paragraph (2) deals with the situation where licenses, fees or excises as to motor vehicles are involved and requires that a serviceman pay these imposts to the State of his residence before he can claim immunity from similar imposts by the State in which he is stationed. This is not so as to ad valorem taxes. There is no requirement that a serviceman pay ad valorem taxes to the State of his residence before he can claim the immunity provided by the first paragraph of §574, and this was precisely the holding of *Dameron v. Brodhead, supra.*

The purpose of the House Trailer Ad Valorem Tax Act, as stated in Section 10007-51 (Appendix B *infra*) is—with reference to assessing and collecting ad valorem taxes on house trailers, to (a) fix the taxable year, (b) fix the lien date, (c) determine the method of assessing, (d) fix the dates for assessing such taxes, (e) prescribe the method of collecting such taxes, and (f) to fix the dates for collecting such taxes.

Another section of the House Trailer Ad Valorem Tax Act, Section 10007-57, provides that the sheriff shall use, for the purpose of assessing and collecting ad valorem

taxes on house trailers to which the Act applies, the assessed value of house trailers as set out in Chapter 588, General Laws of Mississippi (1958), the Motor Vehicle Ad Valorem Tax Act. The 1958 Act requires that "Motor vehicles be assessed uniformly according to value * * *." Section 10007-08. Another provision of the 1958 Act, Section 10007-10, directs the State Tax Commission to prepare an assessment schedule of motor vehicles, as defined in the Act, which is to be used by the tax collector in assessing, calculating, and collecting ad valorem taxes. The Commission is authorized to use any method in preparing the schedule which, in its judgment, will tend to equalize the assessed value of property in this class with property in other classes in general, including reference to the values of various makes, models, year of manufacture, and types of motor vehicles as adopted by a reputable nation-wide agency or association which regularly compiles and furnishes such information.

It is, therefore, clear that the House Trailer Ad Valorem Tax Act is concerned with the assessment and collection of ad valorem property taxes on stationary house trailers, such as the appellant's. Not only does the 1962 Act expressly deal with "ad valorem taxes" (e.g. Sections 10007-52, 10007-53, *supra*), but it also provides that the assessments are to be based upon value. The appellant's tax receipt indicates that his house trailer was valued for tax purposes at $460, that the state, county, and municipal tax rate was applied to this valuation, and that his total ad valorem taxes amounted to $36. (R. 26.) Finally, since Section 10007-53 of the 1962 Act, *supra*, requires "Any person owning, occupying, using, or having in his possession or control a house trailer" to register it and pay ad

valorem taxes on it, it is clear that the taxes in question are upon mere ownership and possession of property, whether or not the highways are used. Plainly, the taxes paid by the appellant were property taxes.

Moreover, such a direct property tax is plainly not a "license, fee, or excise" within the meaning of Section 574(2). Mississippi has elsewhere provided for licenses and fees, such as the annual highway privilege tax on house trailers which are drawn over the highways. Sections 9352-09(b) and 9352-16, 7 Mississippi Code (1942), Recompiled (1962 Cum. Supp.)

It must be concluded that the taxes which the appellant paid under protest on his house trailer were ad valorem personal property taxes, and were not licenses, fees, or excises. The proviso in Section 574(2) is inapplicable; and Section 574(1) bars the imposition of such taxes.

II.

ALTERNATIVELY, IF THE COURT SHOULD CONCLUDE THAT §574(1) DOES NOT DISPOSE OF THE CASE, AND THAT THEREFORE CONSIDERATION SHOULD BE GIVEN TO §574(2), PETITIONER SUBMITS THAT §574(2) IS INAPPLICABLE, BECAUSE A HOUSE TRAILER IS NOT A MOTOR VEHICLE.

A condition to the application of the proviso in Section 574(2) is that the license, fee, or excise in question is imposed on "motor vehicles". The appellant's house trailer, while it does have wheels, is supported by concrete blocks and is not self-propelled. (R. 17-18, 20, 35.) The Attorney General in his opinion concluded with-

out discussion that "The application [for refund] shows further that the property upon which the tax was paid is, in fact, a motor vehicle," citing the provisions of the 1962 house trailer tax act and the 1958 motor vehicle tax act. (R. 36-38 and Appendix C, *infra.*) There is no basis in either of these statutes for this conclusion.

The lack of a special definition of the words "motor vehicles" in Section 574(2) thus implies that Congress employed them in their usual and customary sense. Moreover, the absence of qualifying words or special definition is particularly important in this situation because the statute, as a whole, is carefully drafted, utilizing precise language and special definitions. The Supreme Court of the United States in *Addison v. Holly Hill Co.*, 322 U. S. 607, when faced with a similar problem of determining the meaning of common words used in a statute, noted that (pp. 617-618)—

> "the ultimate question is what has Congress commanded, when it was given no clue to its intentions except familiar English words and no hint by the draftsmen of the words that they meant to use them in any but an ordinary sense. * * * After all, legislation when not expressed in technical terms is addressed to the common run of men and is therefore to be understood according to the sense of the thing, as the ordinary man has a right to rely on ordinary words addressed to him."

Moreover, the provisions of the Soldiers' and Sailors' Civil Relief Act must be read, as the Supreme Court of the United States said in *Le Maistre v. Leffers*, 333 U. S. 1, 6, "with an eye friendly to those who dropped their affairs to answer their country's call."

Petitioner submits that the Supreme Court of Mississippi erred when it concluded that the definition of motor vehicles in other Federal statutes included house trailers. It is clear from each statute cited that "movement" is an essential element in each definition of the words "motor vehicle"; and that mere capability of being moved does not bring the object within the meaning of the definition. Thus:

A. In 40 U.S.C. 472(1) (this is the federal statute pertaining to management of Government property) the term "motor vehicle" is defined to include any vehicle self-propelled or drawn, but the definition goes on to state that the vehicle must be "designed and operated principally for highway transportation."

B. In 49 U.S.C. 303 (this is the statute dealing with motor carriers in interstate commerce), the term "motor vehicle" is defined to include a trailer, but the definition goes on to make clear that it must be "propelled or drawn by a mechanical power and used upon the highways".

C. In 18 U.S.C. 31 (this statute deals with destruction of aircraft and motor vehicles), the term "motor vehicle" specifically provides that the object must be "propelled or drawn on the highways in the transportation of passengers and property".

Perhaps a better example to illustrate that movement on highways is intended by Congress whenever it used the term "motor vehicle" is 18 U.S.C. 2311 (Interstate transportation of stolen property), which defines the term "motor vehicle" among other things as "any

other self-propelled vehicle designed for running on land."

It is submitted, therefore, that the Supreme Court of Mississippi erred when it concluded that those federal statutes which are in pari materia impel the conclusion that the term "motor vehicle" whenever used by Congress includes a house trailer which has not, as in this case, been moved over the highways at all during the taxable period.

III.

ALTERNATIVELY, IF A HOUSE TRAILER IS A MOTOR VEHICLE WITHIN THE MEANING OF §574(2) THEN THE PROVISO OF THIS SECOND PARAGRAPH DOES NOT APPLY BECAUSE THE STATE OF SOUTH CAROLINA, WHICH IS PETITIONER'S DOMICILE, REQUIRES NO PAYMENT OF TAX OF ANY SORT UNLESS THE VEHICLE OPERATES OR MOVES ON THE HIGHWAYS OF SOUTH CAROLINA.

A further condition to the application of the proviso in Section 574(2) is that the serviceman has failed to pay licenses, fees, or excises imposed on his motor vehicle by the state of his residence or domicile. The fact that the appellant is a resident and domiciliary of the State of South Carolina (R. 16-17) has been accepted without question by the Attorney General (R. 37). It is also clear that the appellant has never registered his house trailer, or paid any taxes on it to the State of South Carolina or to any other state. (R. 17, 31.) However, the Attorney General found that South Carolina required each house trailer to be registered and licensed, and a registration fee paid on it, that the

appellant had failed to pay, and that under Section 574(2) he was therefore not covered by the exemption and was liable for the tax paid. (R. 37, 38.) The Chancellor agreed with this conclusion, relying on the opinion of the Attorney General and the authorities referred to there, and, in addition, on Section 46-100, 10 Code of Laws of South Carolina 1962 (1962 Supp.) (Appendix B, *infra*). R. 42.

The Supreme Court of Mississippi erroneously concluded that the proviso of §574(2) required that petitioner *register* his house trailer with South Carolina authorities before he could claim immunity from the Mississippi ad valorem tax. However, §574(2) does not deal with registration at all, but with *payment* of "licenses, fees or excises" — *when required*. But under the facts of this case South Carolina did not require the payment of any fees, licenses or excises.

Under South Carolina law, "Every * * * trailer * * * operated or moved upon a highway in this State shall be registered and licensed * * * 10 Code of Laws of South Carolina (1962), Sec. 46-11 (Appendix B, *infra*). The annual license fee for such a house trailer is $6. Section 46-35.3, 10 Code of Laws of South Carolina (1962) (Appendix B, *infra*). Section 46-100, 10 Code of Laws of South Carolina 1962 (1962 Supp.) states that "Within fifteen days after bringing a mobile home or house trailer into this State, or the purchase of a mobile home or house trailer in this State, for dwelling purposes," the owner shall obtain a license from the county. The annual license fee under this provision is $2. Section 46-100.2, 10 Code of Laws of South Carolina (1962) (1962 Supp.) (Appendix B, *infra*). However, a house trailer which is licensed by the South Carolina

State Highway Department under Section 46-11 is exempted from the registration requirement of Section 46-100. Section 46-100.4, 10 Code of Laws of South Carolina (1962) (1962 Cum. Supp.) (Appendix B, *infra*).

By means of the statutory provisions outlined above the State of South Carolina has dealt with two groups of house trailers—(1) those "operated or moved upon a highway" in South Carolina, and (2) those brought into South Carolina or purchased in that state which are not used on the highways. However, the house trailer of the appellant was purchased in the State of Mississippi and has never been out of this state. (R. 31.) Since it has never been taken into the State of South Carolina and has never been moved or drawn over the highways of that state, it is not covered by the license, fee, or excise requirements established by the State of South Carolina. The appellant, therefore, has not failed to pay any licenses, fees, or excise imposed on his house trailer by South Carolina because that state has not established any such requirements for house trailers such as the appellant's.

The fact that the State of South Carolina has not imposed licenses, fees, or excises on house trailers such as the appellant's is not an authorization to the State of Mississippi to do so. In *Dameron v. Brodhead*, 345, U. S. 322, the Supreme Court of the United States considered that very question and rejected the contention that a taxing jurisdiction could step into the void resulting from the non-action by the state of residence or domicile. The Court held that Section 574 forbade the collection of a personal property tax when the state of the taxpayer's residence and domicile

had levied none, noting that the statute plainly provided that (p. 326)—

> " 'personal property shall not be deemed to be located or present in or to have a situs for taxation' in the state of temporary presence in any case. There is no suggestion that the state of original residence must have imposed a property tax. Since the language of the section does not establish a condition to its application, we would not be justified in doing so."

It must be concluded that since South Carolina has imposed no license, fee, or excise on the appellant's house trailer, he did not, within the meaning of the proviso in Section 574(2), fail to pay "the license, fee, or excise required by the State * * * of which the person is a resident" or a domiciliary. Section 574(1), therefore, is applicable to bar the taxes in question.

CONCLUSION

In the light of the foregoing, it is respectfully submitted that this petition for a writ of certiorari should be granted.

Respectfully submitted,

HUBERT, BALDWIN &
ZIBILICH
300 Oil & Gas Building
1100 Tulane Avenue
New Orleans, Louisiana

By:_____

CERTIFICATE

I hereby certify that a copy of this petition has been mailed to the Honorable Joe T. Patterson, Attorney General of the State of Mississippi, Counsel of Record in this case, addressed to him at his public office in Jackson, Mississippi.

Leon D. Hubert, Jr.

APPENDIX A

Sgt. Jesse E. SNAPP

v.

Honorable W. D. NEAL, State Auditor of Public Accounts, State of Mississippi, and Honorable Joe T. Patterson, Attorney General of the State of Mississippi.

No. 43086

Supreme Court of Mississippi.

June 1, 1964.

BRADY, Justice.

This is an appeal by Sgt. Jesse E. Snapp under and by virtue of Section 1147, Mississippi Code of 1942, recompiled, from the final order and decree of the Chancery Court of Copiah County, Mississippi, filed August 14, 1963. The notice of appeal was filed on November 1, 1963. The appellant, under Sec. 9979, Vol. 7A Miss. Code of 1942, instituted the proceedings below to review the disapproval by the State Auditor of Public Accounts and the Attorney General of the State of Mississippi of his application for refund of taxes paid by him on his house trailer. On December 28, 1962, the appellant paid to the Sheriff and Tax Collector of Copiah County, Mississippi, under protest, the exiguous sum of $38.50 in payment of the assessment and levy made on his house trailer under House Bill No. 747, Chap. 535, General Laws of Mississippi (1962). The appellant filed an ap-

plication for a refund, and on April 4, 1963, the attorney general disapproved it. The state auditor gave notice of the denial of his application on April 5, 1963. On June 26, 1963, the appellant filed a petition for appeal and review of the denial of his application for refund in the Chancery Court of Copiah County, Mississippi. On August 13, 1963, the chancellor entered a final order decreeing that the action of the attorney general in disapproving the application be affirmed for the reasons set forth in the opinion of the attorney general in entering judgment against the appellant for costs. From this decree the appellant has appealed to this Court.

The record discloses the following facts:

Since the re-entry of the appellant on October 29, 1951, into the military service, he has been a resident and domiciliary of Pacolet, South Carolina; he is a registered voter there and his relatives are residents of and are domiciled in South Carolina, and he intends to return to South Carolina on completing his military service. On May 16, 1959, the appellant purchased a house trailer in Greenville, Mississippi. This trailer was moved outside of the city of Greenville, Mississippi, and the appellant resided in this trailer until October, 1961. On October 28, 1961, he became an active member of the United States Air Force and was stationed at Crystal Springs, Mississippi. He was assigned as a permanent party, subject to duty elsewhere. His presence in Mississippi is simply in compliance with his military orders. Since before November 1, 1962, he has lived in his house trailer out from Crystal Springs, Mississippi, at the Sojourner Trailer Court, where he was transferred, as stated, from

Greenville, by the Transit Homes, Inc. This trailer was moved over the Mississippi highways and the trailer was parked out from Crystal Springs on privately owned property. The trailer is connected with water, sewerage and electricity, which are detachable. It is now resting on concrete blocks but has wheels and it can be moved over the highways but is not self-propelled. This trailer was not registered on November 1, 1962, under the laws of South Carolina or under the laws of any other state, and no taxes have been paid to South Carolina or to any other state for any period beginning on or after November 1, 1962. On December 15, 1962, the Sheriff of Copiah County notified appellant that there had been an assessment and levy of taxes on his house trailer under the House Trailer Ad Valorem Tax Act which were due on or before November 1, 1962, and that the house trailer would be sold if payment was not made by January 1, 1963. On December 28, 1962, as a result of this notice and under protest, appellant paid the sum of $38.50. On February 4, 1963, an application for a refund of the tax paid and interest was made. On April 5, 1963, the application for the refund of the tax was denied by the attorney general by proper notice, and notice was also given by the state auditor, W. D. Neal, that the application had been denied. On June 26, 1963, petition to review the disallowance of refund was filed in the Chancery Court of Copiah County, Mississippi. On June 28, 1963, the chancellor ordered the state auditor to transmit to the court a certified copy of the record, which was done. On August 13, 1963, after examining the record and hearing oral arguments of counsel, the chancellor entered the final order affirming the action of the attorney general and disapproving appellant's application for

refund and entering a judgment against the appellant for costs. It is from this decree and order that this appeal is prosecuted to this Court.

The basic issue presented by this appeal is whether the chancellor erred in holding that the ad valorem taxes imposed on appellant's house trailer were not barred by Section 574 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended. This question necessarily involves other related questions which will be taken up in appropriate order.

(I) It is the argument of the appellant that under Section 574 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, the situs for taxation of the personal property of a nonresident serviceman is in his state of residence or domicile. Dameron v. Brodhead, 345 U.S. 322, 73 S.Ct. 721, 97 L.Ed. 1041; United States v. Arlington County, Commonwealth of Virginia, 326 F.2d 929 (C.A. 4th); Biennial Report of the Attorney General of Mississippi (1957-1959), pp. 99-100; H. Rep. No. 2198, 77th Cong., 2d Sess., p. 6; H.Rep. No. 1514, 78th Cong., 2d Sess., p. 2.

(II) The appellant further contends that the proviso in Section 574(2) is inapplicable because the taxes levied upon the house trailer of the appellant were ad valorem personal property taxes, not motor vehicle licenses, fees, or excises.

(III) The appellant further contends that the proviso in Section 574(2) is inapplicable because the appellant did not fail to pay the motor vehicle licenses, fees, or excises levied on his house trailer by his state of residence, or domicile, since South Caro-

lina had not imposed any such license, fee, or excise on his house trailer.

(IV) The appellant urges that the proviso in Section 574(2) is inapplicable because the appellant's house trailer was not a motor vehicle as that term is used in Section 574(2).

In order to resolve the basic questions in issue, it is necessary that we review that portion of 50 U.S. Code App. § 574, which has application, and which is as follows:

"(1) For the purposes of taxation in respect of any person, or of his personal property, * * * by any State, * * * such person shall not be deemed (a) to have lost a residence or domicile in any State, * * * solely by reason of being absent therefrom in compliance with military or naval orders, or (b) to have acquired a residence or domicile in * * * any other State, * * * while, and solely by reason of being, so absent. For the purposes of taxation in respect of the personal property, * * * of any such person by any State, * * * of which such person is not a resident or in which he is not domiciled, * * * *and personal property shall not be deemed to be located or present in or to have a situs for taxation in such State*, * * * (Parenthesis (a) and (b) ours.)

"(2) When used in this section, (a) the term 'personal property' shall include *tangible* and *intangible property* (including *motor vehicles)*, and (b) the term 'taxation' shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles or the use thereof: *PROVIDED, That the license, fee,*

*or excise required by the State, * * * of which the person is a resident or in which he is domiciled has been paid.*" (Italics ours.)

[1] It can be conceded, we think, that Section 574 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, bars the imposition by any state and its political subdivisions of ad valorem personal property taxes on personal property owned by a nonresident serviceman. It should be noted, also, however, that there is an exception to this general prohibition and that the federal statute in question does not grant a complete exemption from taxation, but it does create a legal fiction that personal property of a serviceman shall not be deemed to have lost its situs in his home state and acquired a situs where he is in fact physically located as regards all other items of personal property, except motor vehicles. The legal fiction thus created is a bar to taxation by another state other than the state of the domicile of the serviceman, which was set forth in Dameron v. Brodhead, 345 U.S. 322, 73 S.Ct. 721, 97 L.Ed. 1041. It is to be noted, however, that the exception in the statute itself provides that in order for the legal fiction to be effective, insofar as motor vehicles are concerned, the serviceman must have paid certain taxes in the state in which he is a resident or is domiciled. The exact language is:

"PROVIDED, That the license, fee, or excise required by the State, * * * of which the person is a resident or in which he is domiciled *has been paid.* * * * " (Italics ours.)

[2] The appellant contends that provision (2) of

Sec. 574 is inapplicable because appellant's house trailer was not a motor vehicle as that term is construed and used in provision (2) of Sec. 574. It is to be noted that Congress did not undertake to define motor vehicle when it enacted 50 U.S.C.A.App. § 574. Therefore, it should follow that it is logical to apply the definition of the words as used in other federal statutes, to-wit: Title 40 U.S.C.A. 472*(l)* quotes:

"The term 'motor vehicle' means any vehicle, self-propelled *or drawn by mechanical power,* * * *." (Italics ours.)

Title 49 U.S.C.A. § 303 (a) (13) reads as follows:

"The term 'motor vehicle' means any vehicle, machine, tractor, trailer, or semi-trailer propelled *or drawn by mechanical power* and used upon the highways in the transportation of passengers or property, * * *." (Italics ours.)

In 18 U.S.C.A. § 31, we find this definition:

" 'Motor vehicle' means every description of carriage or other contrivance propelled or drawn by mechanical power and used for commercial purposes * * * in the transportation of passengers, or passengers and property; * * *."

[3] Since 50 U.S.C.A.App. § 574, does not attempt to define the meaning of "motor vehicle", any one of these federal statutes can be used to supply the definition of "house trailer" as being included within the words "motor vehicle", and thus clearly refutes the narrow dictionary definition limiting "motor

vehicles" to those that are self-propelled, as urged by the appellant. Mathison v. Brister, 166 Miss. 67, 145 So. 358. Our own statutes, which have definitions relating to motor vehicles, leave no doubt that this definition does include "house trailers". Mississippi's definitions are also controlling upon the courts of the United States by reason of the provisions of 28 U.S.C.A. § 1652, which is as follows:

"The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States, in cases where they apply."

Therefore, since the Act of Congress, 50 U.S.C.A. App. § 574, does not provide a definition for "motor vehicles", the Mississippi definition of the words to include "house trailers" is conclusive and binding upon both this Court and the federal courts. Furthermore, Sec. 3 of Chap. 588, Laws of 1958, the definition section, appearing as Sec. 10007-03 Miss. Code of 1942, Rec., provides in part:

"The subject words and terms of this section for the purpose of this Act, shall have meanings as follows:

"(a) The term *'motor vehicle' shall mean any device* and attachments supported by one or more wheels *which is propelled or drawn by any power,* other than muscular power, over the highways, streets, or alleys of this state." (Italics ours).

Sec. 2, Chap. 535 of the Laws of 1962, the definition

section, appearing as Sec. 10007-52, Miss. Code of 1942, Rec., provides in part:

"The subject words and terms ot this section, for the purposes of this act, shall have meanings as follows:

"(a) The term 'house trailer' shall mean and include any trailer-type vehicle or mobile home, designed and constructed so as to be suitable for use for domestic, commercial, or industrial purposes, and which is constructed so that it may be moved from place to place over the highways and streets by being supported by two (2) or more wheels, and drawn or moved by motive power *not its own,* and which house trailer is not taxed under authority of chapter 588, laws of 1958." (Italics ours.)

[4-6] The appellant concedes that the house trailer is included within the above definition which is pari materia with chapter 588, supra, which by definition also includes his house trailer. It is to be noted that notwithstanding the inclusion of his house trailer within the terms of both the statutes quoted above, appellant has not registered the house trailer or paid any tax thereon during the period of his ownership of the trailer, although it has been drawn along the highways of this state whenever the need arose and is readily capable of being drawn along the highways of this state whenever the need arises again, or whenever the appellant desires to do so. We think, therefore, that the fourth contention of the appellant, that his house trailer was not a motor vehicle as that term is used in Sec. 574(2), is not well taken, nor do we believe that his third contention, that Sec. 574(2) is inapplicable be-

cause the appellant did not fail to pay the motor vehicle license fees and excises levied on his house trailer by his state of residence or domicile since South Carolina had not imposed any such license fee, or excise on his house trailer. The invalidity of contentions (II) and (I) will be hereinafter shown. We assert that it is clear that this section of the act contemplates that the personal property, which is exempt provided a license fee or excise is paid to the state in which the appellant resides, will be located in said state or that said state will have such jurisdiction or control over the trailer or motor vehicle that the license, fee or tax or excise which is due and owing will be paid. It can scarcely be conceded that a legal fiction can give a state the right to tax nonexistent property, that is, property which has never been within the jurisdiction of the state. In order for a state to require the payment of a license or fee or excise on property, the property must be located in the state, or must have been used in the state, and must have become subject to the operation of the state laws involved. The appellant's house trailer here has never been out of the state of Mississippi. It was purchased in this state, has remained in this state, traveled the highways of this state, and has never been in the state of South Carolina. While South Carolina does not require a license fee or excise on his house trailer, still the second paragraph of Sec. 574 of Title 50 U.S.C.A.App., clearly stipulates that the legal fiction created in the first paragraph will not and shall not apply to motor vehicles *unless the serviceman has in fact paid the license fee or excise required by the state in which he is domiciled.* This exception to the blanket immunity granted in the first paragraph shows that the clear and unmistakable congressional intent was that the motor vehicles

of servicemen should be registered according to the laws of the state of his residence, or of some state, regardless of where they may be located, and this is true even though perhaps a license, fee or excise on the trailer is not required by that state. It does not excuse the serviceman from registering the trailer in his home state. Code of South Carolina of 1962, Sec.46-2 (13) provides as follows:

"(13) 'TRAILER:' Every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle; * * *."

Sec. 46-11 provides:

"Vehicles Required to be Registered and Licensed. — Every motor vehicle, trailer, semitrailer, pole trailer and special mobile equipment vehicle driven, operated or moved upon a highway in this State *shall be registered and licensed in accordance with the provisions of this chapter.* It shall be a misdemeanor for any person to drive, operate or move upon a highway or for the owner knowingly to permit to be driven, operated or moved upon a highway any such vehicle which is not registered and licensed and the required fee paid as provided for in this chapter." (Italics ours.)

Section 46-35.3 provides:

"Fees for house trailers. — For every house trailer, the annual fee shall be six dollars. The Department shall classify as a 'house trailer' every trailer or semi-

trailer which is designed, constructed and equipped as a dwelling, living abode, or sleeping place, either permanently or temporarily, and is equipped for use as a conveyance on streets or highways, or a trailer or semitrailer of similar nature whose chassis and exterior shell is designed and constructed for use either permanently or temporarily for advertising, sales, display or promotion of merchandise or services or for any other commercial purpose, except the transportation of property for hire or the transportation of property for distribution by a private carrier. The Department may not license and register a house trailer which exceeds the permissible size limitations prescribed in §§ 46-654, 46-657 and 46-657.1, but such house trailers which may be permitted to be moved over the highways by the Department under special permits issued pursuant to §§ 46-667 to 46-667.3 shall pay to the Department a fee of five dollars per trip."

It is apparent, therefore, that the state wherein appellant claims to be domiciled, namely, South Carolina, does, in fact, require the registration of the house trailer as a motor vehicle. Assuming the operation of the legal fiction, then this requirement of the laws of South Carolina has not been complied with in any way by the appellant. Appellant further admits that the statutes quoted above require the registration of his house trailer in South Carolina if it, in fact, was physically located in the state. He asserts that the statutes of the state in which he is domiciled do not apply because the house trailer was, in fact, located in Mississippi during the entire taxing period, and then paradoxically he seeks to have this Court void the collection of the tax by Mississippi because the provisions of 50 U.S.C.A.App. § 574, provide that the legal status

of the house trailer for tax purposes is in South Carolina. It is the reasoning which was urged in the case of Whiting v. City of Portsmouth, 202 Va. 609, 118 S.E.2d 505, wherein the Supreme Court of Virginia rejected this theory. Accordingly, this theory is rejected by this Court.

[7] In passing, all the appellant had to do to avoid the tax in question in Mississippi was to register his motor vehicle in Mississippi under the laws specifically granting him the tax exemption. This the appellant neglected or refused to do. Chapter 588, Laws of 1958, was passed by the Mississippi Legislature to implement the amendment of Section 112 to the Mississippi Constitution of 1890, and to thereby provide a special method of assessment and collection of taxes on motor vehicles. In recognition of the federal statutes, Sec. 574, supra, and the legal fiction created thereby, the legislature in enacting Chap. 588, supra, provided in Sec. 21 thereof, that:

"Any motor vehicle driven over the highways of this state to the extent that the owner of such motor vehicle is required to purchase a road and bridge privilege license in this state, yet the legal situs of such motor vehicle is located in another state, shall be exempt from ad valorem taxes authorized by this act."

Upon proper inquiry the office of the appellee, the Attorney General, held on July 11, 1958, that such vehicles were not liable for ad valorem taxes provided they were registered in this state. The opinion is published in the biennial report of the Attorney General of Mississippi, 1957-1959, on pages 99 and 100, and provides as follows:

"TAXES — EXEMPTIONS: Members of the armed forces are not liable for ad valorem taxes on personally owned automobiles not used in business.

"By: McLendon, Assistant

"July 11, 1958

"This is in reply to yours of July 2, 1958, wherein you ask whether or not personal automobiles of members of the armed forces stationed in your city are exempt from state, county, and municipal ad valorem taxes whether the tag is bought in this state or another state.

"Section 574, Title 50 U.S.C.A. provides that when a member of the armed forces is in any state in compliance with military or naval orders his '* * * personal property shall not be deemed to be located or present in or to have status for taxes in such state * * *' Sec. 21 of H. B. No. 3, of the Regular Session of 1958, provides 'Any motor vehicle driven over the highways of this state to the extent that the owner of such motor vehicle is required to purchase a road and bridge privilege license in that state, yet the legal situs of such motor vehicle is located in another state, shall be exempt from ad valorem taxes authorized by this act.'

"It is, therefore, the opinion of this office that members of the armed forces of the United States who are non-residents of the State of Mississippi and who are residing in your community in compliance with military or naval orders are exempt from the payment of ad valorem taxes imposed by H. B. No. 3, supra, whether they pay the road and bridge privilege license tax and purchase their license plates in Mississippi or not, pro-

vided the automobile in question is not used in any way for a trade or business."

[8] The appellant, therefore, notwithstanding the specific requirements of the federal act that motor vehicles be registered in the state of the domicile of the serviceman in order to be entitled to tax immunity and the specific provisions of the law of South Carolina that the house trailer be registered in that state, appellant proceeded to operate the house trailer on the highways of Mississippi whenever the need arose. He, also, failed and refused to register his house trailer under the Mississippi act specifically granting to him an ad valorem tax exemption, and which such registration would have specifically granted to him an exemption from the tax paid in this case, Sec. 10007-58(a), Miss.Code of 1942, Rec.

We feel, therefore, that this appellant has deliberately avoided or more properly has waived any and all claims to tax immunity that he might have heretofore enjoyed. This is, of course, an ad valorem tax, the statute so provides it, and makes the payment of the ad valorem tax a condition precedent to the registration of the motor vehicle. This the appellant could have avoided had he complied with the laws of the state of South Carolina, the laws of the state of Mississippi, and the federal laws pertaining thereto. Section 574 of 50 U.S.C.A.App. does not prohibit the levy of an ad valorem tax on motor vehicles unless the serviceman claiming the tax immunity has complied with the laws of the state of his domicile. This the appellant has clearly failed to do. The second paragraph of Sec. 574 provides specifically:

"* * * (b) the term 'taxation' shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles or the use thereof: PROVIDED, That the license, fee, or excise required by the State, Territory, possession, or District of Columbia of which the person is a resident or in which he is domiciled has been paid."

[9] By stipulating expressly that the taxation should not be limited to privilege and excise taxes, it necessarily follows that the prohibited tax must include the only other general branch of taxation, that is, ad valorem. It is emphasized that the federal statute is meant to include ad valorem taxes as being one of the taxes for which the serviceman is *immune, provided he complies with the laws of his home state concerning registration of the motor vehicle.* If he fails to so comply, as was done in this case at bar, he is no longer entitled to protection of the Act of Congress. The failure of the appellant here to comply with the federal law, the law of his home state of South Carolina, or the law of the state of Mississippi in which he has been residing for the past several years, granting him an ad valorem tax exemption, we feel that by his acts in this regard he has waived his right or claim of any nature which he may have had insofar as exemption from taxation is concerned.

"One who claims exemption from taxation has the burden to show that all the conditions on which the exemption was based have been at all times fulfilled." Yazoo & M. V. Railroad Co. v. Adams, 81 Miss. 90, 32 So. 937.

"* * * one claiming exemption from taxation has the

burden of showing that the claim comes clearly within the exemption law, unaffected by other statutes which clearly renders the property subject to a lien for the assessment * * *." Willis Creek Drainage Dist. v. Yazoo County, 209 Miss. 849, 48 So.2d 498.

"* * * when anyone is claiming the benefit of an exception under a statute, the proof must be clear that the one claiming the benefit of an exception comes clearly within the same." Trunkline Gas Co. v. Mississippi State Tax Commission, 238 Miss. 591, 119 So.2d 378.

"Exemptions from taxation are strictly construed, and never presumed, and person claiming exemption had burden to establish his right thereto." Jackson Fertilizer Co. v. Stone, 173 Miss. 183, 162 So. 170.

In 84 C.J.S. Taxation, § 224, p. 431, we find:

"One entitled to the benefit of a grant of exemption must in some way manifest his acceptance of the grant, in order to obtain immunity under it, and in particular must comply with all valid and reasonable conditions imposed by statute; and the same rule applies to a statute commuting taxes or providing for the payment of a gross-earnings tax or other special tax in lieu of general taxation. Such conditions include the planting of forest trees on the exempted land, or the making of a list or return of one's property to the assessors, or the filing of an affidavit, such as an affidavit with respect to the value of the property for which an exemption is claimed."

Section 225 of the same work provides:

"Since taxation is the rule and exemption is the exception, and since exemptions from taxation are not favored, the general rule is that a grant of exemption from taxation is never presumed. On the contrary, since the relinquishment of the power to tax is never presumed, * * * the presumption is against exemption from taxation, and in all cases of doubt as to the legislative intention, or as to the inclusion of particular property within the terms of the statute, the presumption is in favor of the taxing power, and the burden is on claimant to prove or establish clearly his right to the exemption, bringing himself clearly within the terms of such conditions as the statute may impose. Accordingly, one claiming in any form of action or proceeding that his property is exempt from taxation must offer in proof facts and circumstances in support of his claim."

Appellant has obviously made no attempt to comply with the federal act granting him a right to tax exemption by registering his house trailer in the state in which he claims he is domiciled. In fact, to the opposite, he argues in this case that such registration by his state is not required. It is obvious, also, that he has failed to take advantage of the opportunity to register the house trailer in Mississippi under statutes specifically granting to him an ad valorem tax exemption, and he bases and predicates his failure to do so on the ground that such registration was not required because the house trailer was not drawn along the highways. This argument is of no merit because of the undisputed facts, admitted by the appellant through his attorney, that the house trailer has been drawn over

the highways of this state. It appears, therefore, that paragraph (1) of Sec. 574, insofar as the situs for taxation of personal property of a nonresident serviceman being in his state of residence or domicile is concerned, is not involved in the case at bar, since the case at bar is involved under provision (2) of Sec. 574, which is the exception to the general rule and which requires that the serviceman comply with the conditions of Sec. (2) before exemption from taxation is permissible in a state other than the state of his domicile.

[10] In conclusion, the state of Missisippi has a right, recognized by Congress, to require the registration of all motor vehicles that use, or are capable of using, the public highways of this state. This authority does not abridge the rights of citizens to equal protection granted by the Fourteenth Amendment to the United States Constitution. Kane v. New Jersey, 242 U.S. 160, 37 S. Ct. 30, 61 L. Ed. 222; Hendrick v. Maryland, 235 U.S. 610, 35 S.Ct. 140, 59 L. Ed. 385; Blashfield, Cyclopedia of Automobiles & Practice, Vol 1, pp. 470-473; Roberts v. Federal Land Bank of New Orleans, 189 Miss. 898, 196 So. 763; State v. Lawrence, 108 Miss. 291, 66 So. 745, Ann. Cas.1917E, 322; Title 50 U.S.C.A. App. § 574.

[11] The registration of motor vehicles by the owners thereof is one of the most important safeguards which a state can have in operating its internal affairs and in maintaining peace and order. We do not believe that Congress intended by enactment or extension of the Soldiers' and Sailors' Civil Relief Act of 1940 to rob the states of their right to require registration of motor vehicles or to abolish the taxation thereof, which

will happen here if the appellant's contention is to prevail. The act does not grant unto the appellant immunity from all taxation or make him, because of his military service connection, a tax untouchable, which is substantially what the appellant claims. It is evident that the intention of the Congress in extending the life of the Soldiers' and Sailors' Relief Act of 1940 was not to exempt members of the armed services from all motor registration and taxation laws, giving them federal esoteric immunity from these taxes reserved to the states, but to prevent multiplicity of tax assessments against the soliders and sailors by the states into which they are required to reside, or duplicity of tax payments. Having failed to avail himself of the exemption granted by the federal statutes, or the statutes of the state of South Carolina or the state of Mississippi, it follows that the learned chancellor was correct in holding that the appellant was liable for the tax on his house trailer, and the decree of the Chancery Court of Copiah County denying the application of the appellant for a tax refund is affirmed.

Affirmed.

KYLE, P. J., and ETHRIDGE, RODGERS and PATTERSON, JJ., concur.

APPENDIX B

1. *Soldiers' and Sailors' Civil Relief Act of 1940, c. 888, 54 Stat. 1178:*

SEC. 514 [as added by Sec. 17, Soldiers' and Sailors' Civil Relief Act Amendments of 1942, C. 581, 56 Stat. 769; and as amended by Sec. 1, Act of July 3, 1944, c. 397, 58 Stat. 722; and Act of October 9, 1962, P. L. 87-771, 76 Stat. 768].

(1) For the purposes of taxation in respect of any person, or of his personal property, income, or gross income, by any State, Territory, possession, or political subdivision of any of the foregoing, or by the District of Columbia, such person shall not be deemed to have lost a residence or domicile in any State, Territory, possession, or political subdivision of any of the foregoing, or in the District of Columbia, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, while, and solely by reason of being, so absent. For the purposes of taxation in respect of the personal property, income, or gross income of any such persons by any State, Territory, possession or political subdivision of any of the foregoing, or the District of Columbia, of which such person is not a resident or in which he is not domiciled, compensation for military or naval service shall not be deemed income for services performed within, or from sources within, such State, Territory, possession, political subdivision, or District, and personal property shall

not be deemed to be located or present in or to have a situs for taxation in such State, Territory, possession, or political subdivision, or district. Where the owner of personal property is absent from his residence or domicile solely by reason of compliance with military or naval orders, this section applies with respect to personal property, or the use thereof, within any tax jurisdiction other than such place of residence or domicile, regardless of where the owner may be serving in compliance with such orders: *Provided,* that nothing contained in this section shall prevent taxation by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia in respect of personal property used in or arising from a trade or business, if it otherwise has jurisdiction. This section shall be effective as of September 8, 1939, except that it shall not require the crediting or refunding of any tax paid prior to October 6, 1942.

(2) When used in this section, (a) the term 'personal property' shall include tangible and intangible property (including motor vehicles), and (b) the term 'taxation' shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles or the use thereof: *Provided,* That the license, fee, or excise required by the State, Territory, possession, or District of Columbia of which the person is a resident or in which he is domiciled has been paid.

(50 U.S.C. Appendix 1958 ed., Sec. 574.)

2. *7A Mississippi Code 1942, Recompiled:*

§ 9883. *Ad valorem tax—municipal general levy.—*

Municipalities may levy taxes in an amount not exceeding fifteen (15) mills on the dollar of the assessed valuation of all taxable property within such municipality for general revenue purposes and for general improvements. Provided, however, the governing authorities of any municipality may make additional levies for special purposes as authorized by law, provided the aggregate of all such special levies does not exceed the limitation prescribed therefor by law.

* * * *

3. *7A Mississippi Code 1942, Recompiled (1962 Cum. Supp.):*

§ 9877. *State ad valorem tax levy.*

A state ad valorem tax of four (4) mills on the dollar for the year 1958 and for each year thereafter is hereby levied on all taxable property in the State of Mississippi.

* * * *

§ 9879. *Ad valorem taxes—general county levy.*

(1) The board of supervisors of any county is hereby empowered to levy ad valorem taxes on taxable property in the respective counties in any one year, as shown by the assessment roll containing assessments of property made as of January first of the year, and the assessment of motor vehicles as made according to the provisions of the "Motor Vehicle Ad Valorem Tax Act of 1958" [§§ 10007-01 et seq.], for all general county purposes, exclusive only of levies for roads

and bridges and schools, at the rate herein specified, but not in excess of the following amounts or rates:

* * * *

4. *Motor Vehicle Ad Valorem Tax Act of 1958, c. 588, 7A Mississippi Code (1942), Recompiled (1962 Cum. Supp.):*

§ 10007-03. *Definitions.*

The subject words and terms of this section for the purpose of this Act, shall have meanings as follows:

(a) The term "motor vehicle" shall mean any device and attachments supported by one or more wheels which is propelled or drawn by any power, other than muscular power, over the highways, streets, or alleys of this state.

* * * *

§ 10007-04. *Who is liable for tax—time of payment—due date.*

Any person required by law to pay a road and bridge privilege license tax on any motor vehicle shall also be liable for the ad valorem taxes due on such motor vehicle, unless otherwise specifically exempt herein. Such ad valorem taxes due shall be paid at the same time the road and bridge privilege license tax is paid, and the payment of the said ad valorem taxes due shall be a prerequisite to the issuance of the said road and bridge privilege license,

* * * *

§ 10007-21. *Exemptions and credits—penalty for violation of section.*

* * * *

Any motor vehicle driven over the highways of this state to the extent that the owner of such motor vehicle is required to purchase a road and bridge privilege license in this state, yet the legal situs of such motor vehicle is located in another state, shall be exempt from ad valorem taxes authorized by this act.

* * * *

5. *House Trailer Ad Valorem Tax Act, Laws 1962, c. 535, 7A Mississippi Code (1942), Recompiled (1962 Cum. Supp.):*

§ 10007-51. *Purpose of Act.*

The purpose of this act is, with reference to assessing and collecting ad valorem taxes on house trailers, to (a) fix the taxable year, (b) fix the lien date, (c) determine the method of assessing, (d) fix the dates for assessing such taxes, (e) prescribe the method of collecting such taxes, and (f) to fix the dates for collecting such taxes.

§ 10007-52. *Definitions.*

The subject words and terms of this section, for the purposes of this act, shall have meanings as follows:

(a) The term "house trailer" shall mean and include any trailer-type vehicle or mobile home, designed and constructed so as to be suitable for use for domestic, commercial, or industrial purposes, and

which is constructed so that it may be moved from place to place over the highways and streets by being supported by two (2) or more wheels, and drawn or moved by motive power not its own, and which house trailer is not taxed under authority of chapter 588, laws of 1958 [§§ 10007-01 et seq.]

(b) The term "person" shall mean any natural person, agency, firm, copartnership, corporation, joint stock, or other association or organization.

§ 10007-53. *Registration fee report and payment—proration of tax.*

Any person owning, occupying, using, or having in his possession or control a house trailer shall, not later than the last day of November each year, register such house trailer with the sheriff of the county in which it is located on such date. At the time such registration is made, and before a registration certificate and label may be issued, the said owner, occupant, user, possessor, or controller of said house trailer shall pay a registration fee of two dollars and fifty cents ($2.50) together with all ad valorem taxes due on said house trailer for the then fiscal year. Fifty cents (50c) of this fee shall be retained by the sheriff, one dollar ($1.00) shall be paid into the general county fund, and one dollar ($1.00) of this fee shall be forwarded to the tax commission to cover cost of labels, tax receipt forms, etc., as hereinafter provided.

* * * *

§ 10007-58. *Exemptions.*

(a) House trailers which are already taxed under authority of chapter 588, laws of 1958 [§§ 10007-01 et

seq.], are exempt from the taxes authorized by this act.

(b) If any vehicle defined in this act is used or is to be used upon the streets and highways of this state after the tax, as set out in this act, has been paid, then the sheriff shall exempt such vehicle from further ad valorem taxes for the remaining portion of the current fiscal year in issuing a road and bridge privilege license for such vehicle.

* * * *

6. *10 Code of Laws of South Carolina 1962:*

§ 46-2. *Definitions of words and phrases* — The following words and phrases when used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them in this section, to wit:

(1) "*Vehicle:*" Every device in, upon or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human power or used exclusively upon stationary rails or tracks;

* * * *

(13) "*Trailer:*" Every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle;

§ 46-11. *Vehicles required to be registered and licensed.*—Every motor vehicle, trailer, semitrailer, pole trailer and special mobile equipment vehicle driven, operated or moved upon a highway in this State shall be registered and licensed in accordance with the provisions of this chapter. It shall be a misdemeanor for any person to drive, operate or move upon a highway or for the owner knowingly to permit to be driven, operated or moved upon a highway any such vehicle which is not registered and licensed and the required fee paid as provided for in this chapter. (1952 Code § 46-11; 1949 (46) 342.)

§ 46-35.3. *Fees for house trailers.*—For every house trailer, the annual fee shall be six dollars. The Department shall classify as a "*house trailer*" every trailer or semitrailer which is designed, constructed and equipped as a dwelling, living abode, or sleeping place, either permanently or temporarily, and is equipped for use as a conveyance on streets or highways, or a trailer or semitrailer of similar nature whose chassis and exterior shell is designed and constructed for use either permanently or temporarily for advertising, sales, display or promotion of merchandise or services or for any other commercial purpose, except the transportation of property for hire or the transportation of property for distribution by a private carrier. The Department may not license and register a house trailer which exceeds the permissible size limitations prescribed in §§ 46-654, 46-657 and 46-657.1, but such house trailers which may be permitted to be moved over the highways by the Department under special permits issued pursuant to §§ 46-667 to 46-667.3 shall pay to the Department a fee of five dollars per trip. (1952 Code § 46-35; 1949 (46) 342; 1959 (51) 391.)

7. *10 Code of Laws of South Carolina 1962 (1962 Supp.):*

§ 46-100. *Mobile homes and house trailers to be licensed.*—Within fifteen days after bringing a mobile home or house trailer into this State, or the purchase of a mobile home or house trailer in this State, for dwelling purposes, the owner shall obtain a license from the governing body of the county or its designated agent. (1962 (52) 2181.)

§ 46-100.1. *Not to be licensed unless taxes paid.*—No mobile home or house trailer, except those owned or stocked by dealers for resale, may be registered and licensed unless a signed statement accompanies the application certifying that all county and municipal taxes legally due by the applicant during the preceding year have been paid, if such mobile home or house trailer were subject to any such tax. A transfer between members of the same family shall not, for the purpose of this article, be considered a bona fide purchase. (1962 (52) 2181.)

§ 46-100.2. *Period of license; form; fee.*—The license required under the provisions of this article shall be good for a period of one year beginning on the first day of each year. Licenses issued between July first and December thirty-first shall be issued for one half the annual rate. The license shall be of such form as shall be prescribed by the Tax Commission and shall be displayed on the mobile home or house trailer so as to be clearly and readily visible from the outside. The annual license fee shall be two dollars. (1962 (52) 2181.)

§ 46-100.4. *Article not applicable if trailer licensed by Department.*—The provisions of this article shall not be applicable if the mobile home or house trailer is licensed by the Department. (1962 (52) 2181.)

APPENDIX C

The opinion of the Attorney General of the State of Mississippi in this case is as follows (R. 36-38):

[Formal parts omitted]
April 4, 1963

Mr. W. D. Neal
State Auditor of Public Accounts
New Capitol Building
Jackson, Mississippi

Re: Application for tax refund of Sgt. Jesse E. Snapp, Box 539, Crystal Springs, Mississippi

Dear Mr. Neal:

The above-styled application for tax refund is based upon an alleged exemption granted by *50 USC App.* 574. The provisions of that federal statute deemed pertinent to this application provide as follows:

[Section 514 of the Soldiers' & Sailors' Civil Relief Act of 1940, as amended, is omitted.]

It will be noted that the federal statute in question does not grant an exemption from taxation, but it creates a legal fiction that personal property of a serviceman shall not be deemed to have lost its situs in his home state and acquired a situs where it is, in fact, physically located. As regards all other items of personal property, except motor vehicles, the legal fic-

tion thus created is a bar to taxation by a state other than the state of the domicile of the serviceman. *Dameron vs. Brodhead,* 345 U. S. 322, 97 L. ed. 1041.

However, the statute itself provides that in order for the legal fiction to be effective, insofar as motor vehicles are concerned, the serviceman must have paid taxes in the state in which he is a resident or domiciled.

This application shows conslusively that no taxes have been paid on this house trailer in any state other than the taxes for which this application for refund is made. The application shows further that the property upon which the tax was paid is, in fact, a motor vehicle. *Chapter* 535 (H.B. #747), *Laws of* 1962 and *Chapter* 588, *Laws of* 1958.

The State of South Carolina wherein the applicant is domiciled requires that each trailer, including "house trailers," shall be registered, licensed and a registration fee paid thereon. *Sections* 46-2 (13), 46-11 and 46-35.3, *Code of Laws of South Carolina* 1962.

The application shows further that the applicant has failed and refused to register his house trailer under the provisions of *Chapter* 588, *Laws of* 1958, which said statute grants to him an exemption from the payment of ad valorem taxes because of the legal fiction created by 50 *USC App.* 574. Biennial Report of the Attorney General of the State of Mississippi 1957-59, page 99, a copy of which is attached hereto.

From the foregoing, it is the opinion of this office that the taxpayer was and is liable for the tax paid. Which

said payment was made by his own election not to register his motor vehicle in the state of his domicile thereby failing to bring himself within the provisions of the federal statute, or by avoiding the tax by registering his motor vehicle under a statute of this state under which the payment of the taxes is not required. *Whiting vs. City of Portsmouth*, 202 Va. 609, 118 SE 2d 505, supports this view.

It follows that this application for refund should be and the same is hereby disapproved.

Sincerely yours,

JOE T. PATTERSON, ATTORNEY GENERAL
By Martin R. McLendon
Assistant Attorney General

APPENDIX D

Opinion of the Attorney General of the State of Mississippi, dated July 11, 1958, Biennial Report of the Attorney General of Mississippi, 1957-1959, pp. 99-100, is as follows:

This is in reply to yours of July 2, 1958, wherein you ask whether or not personal automobiles of members of the armed forces stationed in your city are exempt from state, county, and municipal ad valorem taxes whether the tag is bought in this state or another state.

Section 574, Title 50, USCA, provides that when a member of the armed forces is in any state in compli-

ance with military or naval orders his ". . .personal property shall not be deemed to be located or present in or to have status for taxes in such state . . ." Section 21 of House Bill No. 3, of the Regular Session of 1958 [Section 10007-21 (Appendix B4, *supra*)], provides "Any motor vehicle driven over the highways of this state to the extent that the owner of such motor vehicle is required to purchase a road and bridge privilege license in that state, yet the legal situs of such motor vehicle is located in another state, shall be exempt from ad valorem taxes authorized by this act."

It is, therefore, the opinion of this office that members of the armed forces of the United States who are nonresidents of the State of Mississippi and who are residing in your community in compliance with military or naval orders are exempt from the payment of ad valorem taxes imposed by House Bill No. 3, supra, whether they pay the road and bridge privilege license tax and purchase their license plates in Mississippi or not, provided the automobile in question is not used in any way for a trade or business.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964.

No. .....

SGT. JESSE E. SNAPP,
Petitioner,

vs.

HONORABLE W. D. NEAL, State Auditor, and HONORABLE JOE T. PATTERSON, Attorney General, both of the State of Mississippi,
Respondents.

RESPONSE OF RESPONDENTS TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI

Respondents, W. D. Neal, former State Auditor, and Joe T. Patterson, Attorney General of Mississippi, respond hereto to the Petition for Writ of Certiorari to the Supreme Court of the State of Mississippi as they have been requested to do by the Court.

The citation of opinion below and the jurisdiction of the Court are not questioned. However, the petitioner does not state the questions presented as they are shown by the statutes and case involved herein.

A material variance appears as the last clause of the circumstances set forth in question numbered 1, as follows:

". . . has never moved or used the state highways during the taxable year." Since the first two questions presented by petitioner are dependent upon that misstatement, we feel compelled to point out wherein it is a misstatement. The Mississippi statutes and the statutes of South Carolina bearing upon the issues provide for the registration of motor vehicles in advance and there is no way of knowing whether a house trailer will or will not be moved or used on state highways during the taxable year until after the taxes have become due and payable thereon. Certainly the record in this case does not support petitioner's statement. The record in the case for refund was completely made and the case was pending long before the end of the year for which the taxes were paid.

The portions of the Mississippi statutes, *Ch. 588, Miss. Gen. Laws of 1958, §§10007-01, et seq., Miss. Code of 1942, Recp., and Ch. 535, Miss. Gen. Laws of 1962, §§10007-51, et seq., Miss. Code of 1942, Recp.,* deemed pertinent to the disposition of this matter are set forth as Appendix "A" and "B" hereto.

The third and fourth questions presented by petitioner are equally misleading for the reasons that:

(1) The state of petitioner's domicile does require registration of house trailers, both mobile and stationary, and the payment of all taxes due thereon is a prerequisite to such registration, and (2) the opinion of the Supreme Court of Mississippi clearly recognizes that *Dameron* v. *Brodhead,* 345 U.S. 322, bars the imposition of taxes upon property of servicemen, other than motor vehicles, by any state, except that of the serviceman's domicile (Pet. Br. p. 26).

For the reasons stated above, respondents present herewith the questions presented by the record.

QUESTIONS PRESENTED

1. Is the petitioner, solely by reason of his being a member of the armed forces of the United States, immuned from registering his motor vehicle (house trailer) under the laws of any state, or must he comply with the Act of Congress granting the immunity in order to claim the benefits of the federal statute?

2. Can petitioner continue to enjoy the privileges of a federal statute when he: (1) fails to comply with the provisions thereof by registering his motor vehicle (house trailer) in the state of his domicile, and (2) elects to fail and refuse to register the motor vehicle (house trailer) in the state where he and the motor vehicle (house trailer) are physically located under state statutes specifically recognizing the federal statute and granting to him an ad valorem tax exception?

ADDITIONAL FACT

In addition to the facts set forth in the Court opinion, adopted as a fair statement of the facts of the case by petitioner, there is one additional material fact shown in the Court opinion not detailed by petitioner.

That fact is that petitioner concedes that the house trailer in question is a house trailer as that term is defined by *Ch. 535, supra,* which is pari materia with *Ch. 588, supra* (Pet. Br. p. 29).

REASON FOR DENYING THE WRIT

Petitioner should not be heard to complain further when he deliberately failed and refused to register his house trailer under a Mississippi statute specifically granting to him an ad valorem tax exemption in recognition of the provisions of *50 U.S.C.A. App.*, §574, and when he has failed and refused to comply with the terms of that statute by registering his house trailer in the state in which he is domiciled.

ARGUMENT

The arguments advanced by petitioner are some of the same ones urged upon the Supreme Court of Mississippi and all lower tribunals. In each case they were courteously heard, carefully considered and forcefully rejected. Respondents submit that a careful review of the Court opinion (Pet. Br. pp. 21-40) will reveal that it is sound and supported by reason and authority.

The firm authority and clear logic of the opinion of the Supreme Court of Mississippi is adopted by these respondents. The following is made in addition thereto and supplementary thereto.

I.

The House Trailer in Question Is a Motor Vehicle for All Purposes of This Proceeding by the Clear Application of the Language of the Statutes Involved and by Petitioner's Own Admission

Petitioner concedes that the house trailer in question is a house trailer within the meaning of *Ch. 535, supra.*

This statute is pari materia with *Ch. 588, supra.* In fact, *Ch. 535, supra,* is supplementary of *Ch. 588, supra,* and the definitions and entire statutes are inter-related.

By *Ch. 535, supra,* a house trailer is defined:

> "(a) The term 'house trailer' shall mean and include any trailer-type vehicle or mobile home, designed and constructed so as to be suitable for use for domestic, commercial, or industrial purposes, and which is constructed so that it may be moved from place to place over the highways and streets by being supported by two (2) or more wheels, and drawn or moved by motive power not its own, and which house trailer is not taxed under authority of Chapter 588, laws of 1958 [§§10007-01, et seq.]."

Ch. 588, supra, defines motor vehicle as follows:

> "(a) The term 'motor vehicle' shall mean any device and attachments supported by one or more wheels which is propelled or drawn by any power, other than muscular power, over the highways, streets, or alleys of this state."

This definition clearly includes house trailers. Thus, it is clearly seen that by petitioner's admission the house trailer in question is, in fact, a motor vehicle for all purposes of this proceeding.

Petitioner cannot, therefore, now be heard to contend that the house trailer is not a motor vehicle because his own statement of facts, written by his attorney, is contrary and opposed to his present position.

In addition thereto, by the failure of §574, *supra,* to attempt to define the meaning of the words "motor vehicle" the definitions as used by the states are controlling, *28 U.S.C.A., §1652.*

South Carolina's statutes dealing with house trailers are as clear as Mississippi's, and they clearly provide that a house trailer may or may not have motive power of its own, §*46-2* (*13*), and must be equipped for use as a conveyance on streets or highways §*46-35.3*. It is, also, clear that South Carolina requires such house trailers to be registered §§*46-35.3* and *46-100*, and that no license may be issued or registration completed until all taxes legally due thereon have been paid §*46-100.1*. All citations in this paragraph are from *10 Code of Laws of South Carolina 1962* (*1962 Supp.*) (Pet. Br. pp. 47-49).

II.

The House Trailer in Question Must Be Located Some Place for Tax Purposes

Petitioner does not deny that the statutes of South Carolina would require the registration of his house trailer in that state, if it was, in fact, physically located in that state.

He asserts that the statutes of South Carolina, in which he is domiciled, do not apply because the house trailer was, in fact, physically located in Mississippi during the taxing period.

While at the same time, he seeks to avoid the tax of Mississippi by invoking the provisions of §*574*, *supra*, which places the legal situs of the house trailer for tax purposes in South Carolina.

If the legal situs of the house trailer was South Carolina, it was located in South Carolina for tax purposes and should have been registered in that state under the provisions of §*46-35.3*, *supra*, or §*46-100*, *supra*. Since it was not physically in South Carolina and petitioner has

failed to comply with the requirements of the second paragraph of §574, *supra*, the house trailer is taxable where it is actually physically located.

Petitioner seeks to avoid the payment of taxes in Mississippi by reason of the provisions of §574, *supra*, while at the same time, he is seeking to have the provisions of §574, *supra*, held inoperative insofar as the state of his domicile is concerned.

We submit that petitioner's logic in this regard is wholly fallacious and should be rejected by this Court as was done by the Supreme Court of Mississippi. See *Whiting* v. *City of Portsmouth*, 202 Va. 609, 118 S.E.2d 505.

Dameron v. *Brodhead*, *supra*, relied upon so heavily by petitioner, did not hold that servicemen were immuned from the civic responsibility of payment of taxes.

Petitioner could have avoided the payment of the taxes paid under *Ch. 535*, *supra*, by registering his house trailer under *Ch. 588*, *supra*, which clearly exempts such motor vehicles from the payment of ad valorem taxes.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari to the Supreme Court of Mississippi should, it is submitted, be denied.

Respectfully submitted,

JOE T. PATTERSON,
Attorney General of Mississippi,
New Capitol Building,
Jackson, Mississippi,

By: .....,
MARTIN R. McLENDON,
Assistant Attorney General,
Attorneys for Respondents.

CERTIFICATE

I, Martin R. McLendon, hereby certify that a copy of the foregoing response to Petition for Writ of Certiorari has been mailed to Honorable Leon D. Hurbert, Jr., and Honorable Archibald Cox, at their regular post office addresses, by U. S. mail postage prepaid.

.....
MARTIN R. McLENDON.

APPENDIX A

§10007-02. **Purpose of Act.**

The purpose of this act is, with reference to assessing ad valorem taxes on motor vehicles which are operated upon the public highways of this state, to, (a) fix the taxable year, (b) fix the tax lien date, (c) determine the method of assessing, (d) fix the date for assessing such taxes, (e) prescribe the method of collecting such taxes, and (f) to fix the date of collecting such taxes.

SOURCE: Laws, 1958, ch. 588, §3.

§10007-03. **Definitions.**

The subject words and terms of this section for the purpose of this Act, shall have meanings as follows:

(a) The term "motor vehicle" shall mean any device and attachments supported by one or more wheels which is propelled or drawn by any power, other than muscular power, over the highways, streets, or alleys of this state.

* * *

§10007-04. **Who is liable for tax—time of payment—due date.**

Any person required by law to pay a road and bridge privilege license tax on any motor vehicle shall also be liable for the ad valorem taxes due on such motor vehicle, unless otherwise specifically exempt herein. Such ad valorem taxes due shall be paid at the same time the road and bridge privilege license tax is paid, and the payment of the said ad valorem taxes due shall be a prerequisite to the issuance of the said road and bridge privilege license.

The ad valorem tax lien date for the purpose of this act shall also constitute the ad valorem tax due date which shall also be the same date that the subject motor vehicle is purchased from a bona fide dealer, if it is intended that such motor vehicle is to be operated upon the highways of this state.

In all cases, however, where the time for complying with the road and bridge privilege tax law has been extended by law as to time of payment, then the same extension of time shall apply to the date on which the ad valorem taxes on such motor vehicle must be paid. Ad valorem taxes on all motor vehicles, defined in this act, shall be calculated as of the first day of the month in which such taxes were due, regardless of any extension of time for payment of such taxes as provided hereinabove.

SOURCE: Laws, 1958, ch. 588, §4.

§10007-05. **Taxable and fiscal years—taxes to be collected by county and municipal tax collectors—when to be paid.**

For the purpose of this act the taxable year and fiscal year shall commence each year on November first and shall end on October thirty-first of the following year, and such taxable year shall run concurrently with the taxable year now in effect in the law pertaining to the payment of the road and bridge privilege license tax on motor vehicles. Ad valorem taxes on motor vehicles shall be collected by the county tax collector for the county and state and by the municipal tax collector for the municipalities and municipal separate school districts. Ad valorem taxes for any ensuing year may be paid during the month of October, however, and said ad valorem taxes on any motor vehicle must be paid at the same time or prior to the time that the road and bridge privilege license is issued for the sub-

ject motor vehicle, unless herein otherwise specifically exempt from such ad valorem taxes.

In cases where the privilege tax is not due on a motor vehicle prior to November thirtieth then the ad valorem taxes due on such motor vehicle shall be calculated for only the proportional part of the taxable year remaining, prorated from the first day of the month on which said taxes are due.

SOURCE: Laws, 1958, ch. 588, §5.

§10007-21. **Exemptions and credits—penalty for violation of section.**

* * *

Any motor vehicle driven over the highways of this state to the extent that the owner of such motor vehicle is required to purchase a road and bridge privilege license in this state, yet the legal situs of such motor vehicle is located in another state, shall be exempt from ad valorem taxes authorized by this act.

* * *

APPENDIX B

§10007-51. **Purpose of Act.**

The purpose of this act is, with reference to assessing and collecting ad valorem taxes on house trailers, to (a) fix the taxable year, (b) fix the lien date, (c) determine the method of assessing, (d) fix the dates for assessing such taxes, (e) prescribe the method of collecting such taxes, and (f) to fix the dates for collecting such taxes.

SOURCE: Laws, 1962, ch. 535, §1.

§10007-52. **Definitions.**

The subject words and terms of this section, for the purposes of this act, shall have meanings as follows:

(a) The term "house trailer" shall mean and include any trailer-type vehicle or mobile home, designed and constructed so as to be suitable for use for domestic, commercial, or industrial purposes, and which is constructed so that it may be moved from place to place over the highways and streets by being supported by two (2) or more wheels, and drawn or moved by motive power not its own, and which house trailer is not taxed under authority of chapter 588, laws of 1958 [§§10007-01, et seq.].

* * *

SOURCE: Laws, 1962, ch. 535, §2.

§10007-53. **Registration fee—report and payment—proration of tax.**

Any person owning, occupying, using, or having in his possession or control a house trailer shall, not later than

the last day of November each year, register such house trailer with the sheriff of the county in which it is located on such date. At the time such registration is made, and before a registration certificate and label may be issued, the said owner, occupant, user, possessor, or controller of said house trailer shall pay a registration fee of two dollars and fifty cents ($2.50) together with all ad valorem taxes due on said house trailer for the then fiscal year. Fifty cents (50¢) of this fee shall be retained by the sheriff, one dollar $1.00) shall be paid into the general county fund, and one dollar ($1.00) of this fee shall be forwarded to the tax commission to cover cost of labels, tax receipt forms, etc., as hereinafter provided.

* * *

§10007-54. **Taxable and fiscal year—tax lien dated—trailer brought into state.**

For the purpose of this act the taxable and fiscal year shall commence each year on November first and shall end on October thirty-first of the following calendar year. The tax lien date shall also be November first for a house trailer owned on that date.

The date of purchase of a house trailer during the fiscal year shall constitute the tax lien date for such vehicle and the ad valorem taxes will be calculated on a prorata basis.

A person bringing such a house trailer into this state, on which the taxes have already been paid in another state, shall be allowed thirty (30) days in which to pay the tax in this state.

SOURCE: Laws, 1962, Ch. 535, §4.

§10007-58. **Exemptions.**

(a) House trailers which are already taxed under authority of chapter 588, laws of 1958 [§§10007-01, et seq.], are exempt from the taxes authorized by this act.

* * *

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1964

No. 632

SGT. JESSE E. SNAPP,

Petitioner,

versus

HONORABLE W. D. NEAL, State Auditor, and HONORABLE JOE T. PATTERSON, Attorney OF THE STATE OF MISSISSIPPI

Respondents.

SUPPLEMENTAL PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI

Petitioner's original application for a writ of certiorari in this cause was filed with the Clerk of Court, United States Supreme Court, on October 28, 1964. On January 13, 1965, the Honorable Joe T. Patterson, Attorney General for the State of Mississippi, was advised by the Clerk that the Court had requested him to file a response to the petition. This response was filed on February 15, 1965. The purpose of this supplemental petition is to respond to and clarify certain aspects raised by the response of the respondents.

1. The petitioner disputes respondent's contention that there is a "material variance" or "misstatement" in the last clause of the circumstances set forth in question numbered one of the original petition. It is a fact that respondent's trailer which is the subject of the assessment, "has never moved or used the State highways during the taxable year". The question presented in its original form is a factual recitation as it pertains to this case and focuses the court's attention on the issue that petitioner seeks to have the Supreme Court review. Section 10007-53, Mississippi Code (see original petition p. 46), provides that in order to comply with the requirement for registration that "at the time such registration is made, and before a registration certificate and label may be issued, the said owner, occupant, user, possessor, or controller of said house trailer shall pay a registration fee of two dollars and fifty cents ($2.50) *together with all ad valorem taxes due on said house trailer for the then fiscal year.*" . . . (italics added). Petitioner submits therefore that such a tax is invalid as to him since Congress has enacted legislation (50 U.S.C. App. 574) which clearly exempts the state other than that of his domicile from imposing an ad valorem tax on personal property under the conditions set forth in his original petition. Since he has no ad valorem tax to pay on his personal property (house trailer) and since compliance with § 10007-53 establishes as a prerequisite for such registration, the payment of "all ad valorem taxes due on said house trailer for the then fiscal year", becomes a situation where the state of Mississippi seeks to circumvent the clear proscription set forth in the federal statute.

2. Respondent is in error when he states (at p. 2 in addressing himself to petitioner's third and fourth questions) that petitioner's domiciliary state, i.e., South Carolina, requires the payment of taxes on a vehicle which has never physically been within the borders of South Carolina. Section 46-100 of the Laws of South Carolina (see p. 49 of petitioner's original petition) only comes into operation when a trailer is brought into South Carolina or is used in South Carolina as a dwelling place. (see also § 46-11 Laws of South Carolina p. 48 of petitioner's original brief). It is clear that registration in South Carolina is contingent upon the "trailer" being brought into the state or purchased and used for dwelling purposes within the state of South Carolina. The fees for house trailers are set forth in §46-35.3 and license fee is set forth in § 46-100.2. In any event, the petitioner's trailer, not having been physically within the State of South Carolina was not "required" to be registered and licenced within the State. Thus, the third and fourth questions presented by the petitioner in his original petition are factually accurate.

3. Respondent on p. 3 of his Response, attempts to restate the questions involved, but he is in error in the following particulars:

a) It is not contended that immunization from registration as required by state law is the result of 50 U.S.C. 574 (2) (§ 514 Sailors' & Soldiers' Civil Relief Act). Petitioner, however, does contend that when payment of an ad valorem tax on a trailer is a prerequisite to registration thereof, as is the case here, then the federal immunity applies to the ad valorem tax. To hold otherwise would mean that a State, such

as Mississippi in this case, could defeat or circumvent the intent of Congress by the subtlety of seeming to require registration only, when in fact no registration is possible until the ad valorem tax is paid, and paid moreover, at the *beginning* of the tax year. To illustrate the extremes to which this argument could go, the following hypothetical is apropos: Serviceman A, a resident of State X, seeks to register his house trailer in the State of Mississippi on 1 November for the ensuing year. One month later, he is transferred out of the State of Mississippi. His house trailer has not used the roads, highways or bridges of the State. He sells his trailer or it burns and is destroyed, and the State has already exacted from him an ad valorem property tax on his house trailer plus the registration fee. The statute is silent as to any application for refund.

A further illustration is the requirement for registration where no use of the roads or bridges is contemplated. Illustrations of such cases might be: (1) operating any motor vehicle within the immediate confines of one's own private property, viz., farm, etc.; (2) motor vehicles in various stages of disrepair (junk) and not used on the roads; (3) motor vehicle on blocks and immobilized for future use as a classic or antique; or (4) motor vehicles used in a hobby collector's stable and not used on the roads. Would Mississippi presume to require registration of such motor vehicle? Petitioner suggests that his situation falls fairly beyond the authority of the State of Mississippi to assess an ad valorem property tax on his personal property which does not have a situs in the State of Mississippi nor is such personal property, viz., motor vehicle (house trailer) moved or driven upon the

roads or highways of the State of Mississippi. Petitioner submits that he is within the protection of a federal statute, i.e., the Soldiers' & Sailors' Civil Relief Act of 1940, as amended, and as such is not liable for ad valorem property taxes to the State of Mississippi.

b) Petitioner has not failed to comply with the laws of his domiciliary State for as demonstrated above, no registration or taxation is required by South Carolina or indeed payable to South Carolina until a trailer is physically within South Carolina.

c) Petitioner did not "elect" not to register the trailer in Mississippi. In fact he did register it, but under protest, for the following reasons: 1, That the registration fee was not due or payable because the trailer had not used the highways; and, 2, That the ad valorem tax, as a prerequisite to registration was not legal because of the immunity granted in Section 514 (a). There is a contradiction in the statement that Mississippi law granted petitioner an ad valorem tax exemption. Why indeed did petitioner have to pay the tax under protest as he did; and why did all the administrative agencies of Mississippi and all its courts hold that the ad valorem tax was due and properly collected?

4. Respondent's point II at pp 6 and 7 is based upon a misconception. South Carolina does not require registration or the payment of the ad valorem tax because of legal situs alone; physical situs is a prerequisite. The exception from the immunity granted by § 514 (2) contained in the final proviso thereof comes into operation *only* when a tax or fee due and pay-

able to the domiciliary state is in fact not paid. The exception clause is not operative where there is nothing due and payable to the domiciliary state whatever may be the reason why there is nothing due and payable; and that is exactly what was held by *Dameron v. Brodhead*, 345 U.S. 322. In his reply, respondent is in fact saying that because the domiciliary state imposes no ad valorem tax in the situation in this case then Mississippi can do so, and again this is exactly the position which the Supreme Court said in *Dameron v. Brodhead* that the City of Denver could not take.

As this Court stated in *Dameron v. Brodhead*:

> "*Congress appears to have chosen the broader technique of the statute carefully,* freeing servicemen from both income and property taxes imposed by any state by virtue of their presence there as a result of military orders. It saved the *sole right of taxation to the state of original residence whether or not that state exercised the right.*" (Emphasis supplied.)

CONCLUSION

In the light of the foregoing, it is respectfully submitted that this petition for a writ of certiorari should be granted.

Respectfully submitted,

HUBERT, BALDWIN & ZIBILICH
300 Oil & Gas Building
1100 Tulane Avenue
New Orleans, Louisiana

By:_____

CERTIFICATE

I hereby certify that a copy of this petition has been mailed to the Honorable Joe T. Patterson, Attorney General of the State of Mississippi, Counsel of Record in this case, addressed to him at his public office in Jackson, Mississippi.

_____

Leon D. Hubert, Jr.

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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1965

No. 16

SGT. JESSE E. SNAPP,
Petitioner,

versus

HONORABLE W. D. NEAL, State Auditor, and
HONORABLE JOE T. PATTERSON,
Attorney General,
both of the State of Mississippi,
Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSISSIIPI

ORIGINAL BRIEF FOR PETITIONER, SGT. JESSE E. SNAPP

CITATION OF OPINIONS BELOW

The opinion of the Supreme Court of Mississippi is reported in 164 So. 2d 752 and is set forth in the record at pp. 46-61.

JURISDICTION

The judgment of the Supreme Court of Mississippi is dated June 1, 1964 and is to be found at pp. 62-63 of the record. The Petition for Certiorari was filed in this Honorable Court on October 28, 1964; and was granted on March 8, 1965 (R. 65). The court has jurisdiction un-

der 28 U.S.C. 1257(3) in that petitioner claims that certain statutes of the State of Mississippi (§9877 - 9879; and § 10007-51—10007-58, Miss. Code Recompiled) as applied in this case, are repugnant to a law of the United States, to wit: 50 U.S.C. App. 574 (§514 of the Soldiers & Sailors Civil Relief Act of 1940 as amended.) For text of Mississippi Statutes see Appendix B hereof; for text of U. S. Statute, see Appendix A hereof.

STATUTES INVOLVED

In addition to the Federal and Mississippi statutes referred to in the jurisdictional statement, a South Carolina statute involved is to be found in Appendix C hereof.

QUESTIONS PRESENTED

1. Does the Soldiers' & Sailors' Civil Relief Act of 1940 as Amended (50 U.S.C. App. 574) prohibit a state from imposing an ad valorem tax on personal property under the following circumstances:

A member of the Armed Services on active duty in the taxing state, which is not his residence, owns a house trailer located in the taxing state which trailer however, has never moved or used the State highways during the taxable year.

2. Alternatively, is a house trailer a motor vehicle within the meaning of the second paragraph of 50 U.S.C. App. 574, under the circumstances stated in paragraph 1 hereof?

3. If a house trailer is a motor vehicle within the meaning of the second paragraph of 50 U.S.C. App. 574, then does the proviso of the second paragraph apply

when the State of the taxpayer's residence does not require a payment of a tax of any sort unless the vehicle operates or moves on the highways of that State?

4. Does the decision of the Supreme Court of Mississippi in this case either misconstrue, misinterpret or ignore the basic reasoning of *Dameron v. Brodhead*, 345 U.S. 322 (1953)?

STATEMENT OF THE CASE

1. *Statement of Facts*

Since October 29, 1951 petitioner has continuously been a member of the Armed Services, to wit: the United States Air Force (R. 12-13). On November 1, 1962 he was stationed at Crystal Springs, Copiah County, Mississippi, and had been stationed there since October 28, 1961 (R. 13). His domicile was at Pacelot, South Carolina, and had been so since prior to his entry in the Service; he was a registered voter there, had the intention of returning to live there, and never intended to lose his South Carolina domicile and become a domiciliary of Mississippi (R. 13). On November 1, 1962 he was physically present and living at Crystal Springs, Mississippi, solely by reason of military orders which made him a member of the permanent Air Force party at Crystal Springs Air Force Station, Copiah County, Mississippi (R. 13).

On May 16, 1959 petitioner, who was then stationed at Greenville Air Force Base, Mississippi, purchased a house trailer from a dealer in Greenville, Mississippi; the purchase price was $5,330.00 and petitioner paid the Mississippi sales tax on this transaction; the trailer

was moved for petitioner by the vendor to a location near Greenville, Mississippi, where it remained until petitioner was transferred by military orders to Crystal Springs Air Force Station; at that time the trailer was transported from Greenville to Crystal Springs by a commercial mover, using Mississippi highways; (R. 25). Upon arrival at Crystal Springs, on October 28, 1961, the trailer was parked at the Sojourner's Trailer Court, a privately owned property, where it was placed on concrete blocks and was connected by pipes, hoses and wires to water, sewerage and electrical facilities. (R. 14). It was never moved on the highways of Mississippi on any date pertinent to this case (R. 25). The trailer never was self-propelled at any time (R.14).

The trailer was in the position, described above, on November 1, 1962 which is the critical tax date under the Mississippi law involved (R. 14 and paragraph 4 of Appendix B). On December 15, 1962 the Sheriff and Tax Collector of Copiah County issued a notice of assessment to petitioner stating that petitioner's house trailer had been assessed and levied upon for taxes which had become due and payable on November 1, 1962 and became delinquent thirty days thereafter. (R. 16-17). This notice also advised petitioner that unless the taxes claimed were paid by January 1, 1962 there would be an addition of 25% for damages, plus interest and costs and that the trailer would be sold for the taxes et cetera on January 28, 1963 unless paid. (R. 17). As a result of this notice and warning petitioner paid the tax on December 28, 1962 (R. 14) but did so under protest. (R. 21). A photocopy of the bill and receipt for these taxes, reproduced at p. 21 of the record, shows that the State and County Tax was $24.50 and

that the Municipal Tax was $11.50 or a total of $36.00 plus a registration fee of $2.50, or a total of $38.50. This bill and receipt also shows that the State, County and Municipal tax were ad valorem taxes since they were calculated upon a percentage or rate of value. (R. 21).

2. *Proceedings Below*

On February 6, 1963, petitioner, proceeding under Mississippi law, filed an application for a refund with the respondent, W. D. Neal, Auditor of Public Accounts, (R. 12-15) to which he attached the Sheriff's assessment notice (R. 16-17) and a memo in support of his application (R. 17-20).

Petitioner's application was forwarded by respondent Neal to respondent Joe T. Patterson, Attorney General of the State of Mississippi, for his approval or disapproval and there resulted some correspondence, which is contained in the record between pages 22-39 thereof. The ultimate result was a denial of the application for a refund on April 5, 1963 (R. 39). On June 26, 1963 petitioner filed a petition for appeal and review in the Chancery Court of Copiah County, Mississippi (R. 2-3) and that court ordered respondent Neal to transmit all papers and documents relative to the application (R. 4). Respondent Neal transmitted all papers under his certificate dated July 12, 1963 (R. 7). On August 13, 1963 the Chancery Court of Copiah County affirmed the denial of the application for the refund. (R. 40). An appeal was taken to the Supreme Court of Mississippi on October 31, 1963 (R. 41) and the latter court rendered its opinion and judgment affirming the judgment of the Chancery Court of Copiah County, Mississippi, on June 1, 1964 (R. 46-63).

When petitioner filed his application for a refund with the State Auditor he invoked the immunity of the Soldiers' & Sailors' Civil Relief Act, 50 U.S.C. App. 574 (See paragraph X of his application at R. 15); and he also invoked this immunity in the State courts [See paragraph 3 of Petition for Appeal & Review, (R. 2) and Opinion of the Supreme Court of Mississippi, (R. 46-61)].

SUMMARY OF ARGUMENT

Section 574 of Title 50 U.S.C. App. (Soldiers' & Sailors' Civil Relief Act) prohibits an ad valorem property tax imposed by Mississippi upon a house trailer owned by a serviceman under the facts of this case.

POINT I

The history of the Act, including its several amendments, shows that Congress intended that a liberal interpretation in favor of immunity from taxation be given to Section 574. This Court followed this liberal view in *Dameron v. Brodhead*. Section 574(2) provides that motor vehicles are specifically within the immunity unless the proviso in §574(2)(b) completely annuls the immunity when its terms are not met. The proviso can be and should be read so that the only immunity lost is from "license, fees and excises" and not from ad valorem property taxes. The intent of Congress, in the proviso, was solely to set up a system of police control over highly mobile personal property, to wit: motor vehicles, and the provision was never intended to affect the immunity from ad valorem property taxes. Finally, if there is any doubt about the Congressional intent, it can and should be resolved in favor of the

serviceman because of the history of liberality manifested by Congress in the original version of Section 574 and in the subsequent amendments of 1942, 1944 and 1962.

POINT II.

Alternatively, a house trailer, as factually described in this case, is not a motor vehicle within the meaning of the Federal Statute. The Federal Statute must control and the Mississippi Legislature cannot define a house trailer to be a motor vehicle within the meaning of the Federal Statute, if the Federal Statute cannot itself be read to include house trailers. While Section 574 does not define the term "motor vehicle" it is appropriate to look to definitions of that term in other Federal Statutes and in the jurisprudence generally. The element of mobility and movement on the public highways and roads is an essential element in all such definitions. This essential element is lacking as to the house trailer in this case.

POINT III.

Alternatively, if a house trailer is a motor vehicle within the meaning of Sec. 574 (2), then the proviso does not apply in this case since South Carolina, the domicile State, required no payment of tax of any sort unless the trailer operates or moves on the highways of the State or the trailer is physically present within the State and is occupied as living accommodations within that jurisdiction. There being no *requirement* of a "license, fee or excise" on petitioner's house trailer by his home State, it cannot be said that he has *failed* to pay the tax to that State.

POINT IV.

Finally, the Supreme Court of Mississippi has misconstrued, misinterpreted or ignored the reasoning of this Court in *Dameron v. Brodhead* in that it has given a narrow construction to Section 574, and has based its decision on the requirement of double taxation, which latter principle was repudiated in *Dameron v. Brodhead.*

ARGUMENT

POINT I

AN ANALYSIS OF SECTION 574, ITS HISTORY AND THE INTERPRETATION IT RECEIVED IN DAMERON V. BRODHEAD SHOWS THAT IT PROHIBITS THE IMPOSITION OF THE MISSISSIPPI TAX INVOLVED IN THIS CASE.

A *Analysis of Sec. 574.*

1. Section 574 clearly sets forth that when a person in the military service is absent from his state of residence in compliance with military orders, no state other that the state of his domicile may impose a tax on his personal property.

2. Section 574 reaches this result by declaring that such personal property does not have a "situs" in the host state for purposes of taxation. See Sec. 574 (1).

3. Motor vehicles are specifically included in the term personal property. See Sec. 574 (2) (a).

4. With reference to motor vehicles, all taxes, in-

cluding licenses, fees and excises are specifically within the immunity; but a proviso is added, reading as follows:

> "Provided, that the license, fee, or excise required by the State, Territory, possession, or District of Columbia of which the person is a resident or in which he is domiciled has been paid."

B. *History of Section 574.*

1. Prior to 1942, the Soldiers' & Sailors' Civil Relief Act (Laws of 1940, c. 888, 54 Stat 1178) did not contain the immunity concept set forth in the present Sec. 574. The only tax relief granted to a serviceman was that his property could not be sold for taxes falling due prior to or during his period of military service. (See Sec. 500, c. 888, Laws of 1940, 54 Stat. 1178, now 50 U.S.C. App. Sec. 560).

2. In 1942 the Act was amended by the addition of an entirely new section (Sec. 514, c. 581, Laws of 1942, 56 Stat 777; see the full text in Appendix G) which, for the first time, gave relief to the serviceman from taxes on his property solely by reason of his being absent from his home state and being present under military orders in the taxing state. Although it was intended that the amendment would apply to taxes on personal property, the results among the various states were not clear. See House Report, No. 1514, 78th Congress, 2d Session, pp. 1-2, Appendix F, pp. 53-54 hereof.

3. In 1944 to clarify this situation and to remove all doubt Congress again amended Sec. 574. (See Appendix

G, pp. 55-57. This clarification took several forms (all, incidentally, showing a Congressional intent toward a broader, more liberal approach with reference to the application of the immunity):

(1) The 1944 Act added the word "personal" before the word "property" wherever it appeared.

(2) The 1944 Act adopted a somewhat different approach towards the problem. Initially, the 1942 Act (see Appendix G) approached the question of immunity by stating that a serviceman did not either acquire a new domicile or lose an old one by reason of military assignments. However, this did not adequately meet the "actual physical situs" problem and resulted in taxation by some host states (See Appendix F). The 1944 Act met the "situs" problem head on by changing the approach from the acquisition or loss of domicile concept to a flat statement that there would not thereafter be *any* situs in the host state of property in physical possession of a serviceman in a host state, if he and his property were there solely because of military orders.

(3) In the 1944 Act, Congress, for the first time, addressed itself to the status of motor vehicles as personal property and declared that they *were* included in the general exemption (see Paragraph (2) (a), Sec. 574; and that as to motor vehicles, the taxation from which immunity was granted "shall include but not be limited to licenses, fees and excises" required by the home state.

4. In 1962, Section 574 was again amended to add a sentence making it clear that the *only* situs which any personal property could have for tax purposes under

any circumstances was the domicile of the serviceman. (See Sec. 574, as amended October 9, 1962, 76 Stat. 768, text in Appendix A).

C. *Interpretation of* §574.

1. The problem which gave rise to the policy announced in Section 574 was the possible subjection of military personnel serving in several taxing jurisdictions through no choice of their own to the taxation of their property by several states in the same calendar year. H. Rep. No. 2198, 77th Cong., 2d Sess., p. 6; H. Rep. No. 1514, 78th Cong., 2d Sess., p. 2 (See Appendix F). However, Congress did not limit its policy to situations of actual multiple taxation. This problem was considered in *Dameron v. Brodhead*, 345 U.S. 322, (1953), where the City of Denver, Colorado, had imposed a tax on the personal property of a United States Air Force officer stationed in Colorado and living in Denver, whose residence and domicile were in Louisiana. In rejecting the contention that the city could tax the officer's personal property because there was no danger of multiple taxation since Louisiana had imposed no taxes on the personal property of its residents, the Supreme Court of the United States explained that (p. 326) —

> "though the evils of potential multiple taxation may have given rise to this provision, *Congress appears to have chosen the broader technique of the statute carefully,* freeing servicemen from both income and property taxes imposed by any state by virtue of their presence there as a result of military orders. It saved the sole right of taxation to the state of original residence whether or not that state ex-

ercised the right. Congress, manifestly, thought that compulsory presence in a state should not alter the benefits and burdens of our system of dual federalism during service with the armed forces." (Italics added).

2. The Supreme Court of the United States also considered the constitutionality of Section 574 in the *Dameron* case, and upheld it as being within the powers delegated to the Congress to wage war and to enact necessary and proper supplementary legislation. The Court also noted that Section 574 in no way affected the reserve powers of the states to tax, since the "statute merely states that the taxable domicile of servicemen shall not be changed by military assignments." 345 U.S. p. 325.

D. *Analysis of Mississippi Statutes.*

1. The purpose of the House Trailer Ad Valorem Tax Act, as stated in Section 10007-51 (Appendix B para. 4 infra) is — with reference to assessing and collecting ad valorem taxes on house trailers, to (a) fix the taxable year, (b) fix the lien date, (c) determine the method of assessing, (d) fix the dates for assessing such taxes, (e) prescribe the method of collecting such taxes, and (f) to fix the dates for collecting such taxes.

2. The statute fixes a basic fee of $2.50 for registration of a house trailer but requires as a condition precedent for issuing a registration certificate that the ad valorem property tax be paid. Thus, the text of the statute on this point is as follows:

"At the time such registration is made, and

> before a registration certificate and label may be issued the said owner, occupant, user, possessor, or controller of said house trailer shall pay a registration fee of two dollars and 50/100 cents ($2.50), together with all ad valorem taxes due on said house trailer for the then fiscal year."

See §10007-53, par. 4, appendix B.

Thus, the amount of the registration fee does not vary depending upon the valuation of the vehicle while, of course, the property tax does. This taxing pattern is distinguishable from those in which there is a clear cut excise tax imposed for use of the highway, and the amount of the excise tax depends on the value of the motor vehicle. See *Ingels v. Riley*, 5 Cal. 2d 154, 53 P. 2d 939 (Calif. 1936). Mississippi makes no pretense that the property aspect of the tax in this case is anything other than an ad valorem property tax, separate and apart from the registration fee. The Supreme Court of Mississippi, in the opinion below, is in accord, for it states:

> "By stipulating expressly that the taxation should not be limited to privilege and excise taxes, it necessarily follows that the prohibited tax must include the only other general branch of taxation, that is, ad valorem." (R. 58)

3. Another section of the House Trailer Ad Valorem Tax Act, Section 10007-57, provides that the sheriff shall use, for the purpose of assessing and collecting ad valorem taxes on house trailers to which the Act applies, the assessed value of house trailers as set out

in Chapter 588, General Laws of Mississippi (1958), i.e. the Motor Vehicle Ad Valorem Tax Act. The 1958 Act requires that "Motor vehicles be assessed uniformly according to value * * *." (Section 10007-08) Another provision of the 1958 Act, Section 10007-10, directs the State Tax Commission, to prepare an assessment schedule of motor vehicles, as defined in the Act, which is to be used by the tax collector in assessing, calculating, and collecting ad valorem taxes. The Commission is authorized to use any method in preparing the schedule which, in its judgment, will tend to equalize the assessed value of property in this class with property in other classes in general, including references to the values of various makes, models, year of manufacture, and types of motor vehicles as adopted by a reputable nation-wide agency or association which regularly compiles and furnishes such information.

4. It is, therefore, clear that the House Trailer Ad Valorem Tax Act is concerned with the assessment and collection of ad valorem property taxes on house trailers, such as the petitioner's. Not only does the 1962 Act expressly deal with "ad valorem taxes" (e.g. Sections 10007-52, 10007-53, para. 4, Appendix B), but it also provides that the assessments are to be based upon value (Sections 10007-57, para. 4, Appendix B and 10007-08, para. 3, App. B). The petitioner's tax receipt indicates that his house trailer was valued for tax purposes at $460.00, that the state, county, and municipal tax rate was applied to this valuation, and that his total ad valorem taxes amounted to $36.00. (R. 21)

5. Finally, since Section 10007-53 of the 1962 Act, supra, requires "Any person owning, occupying, using, or having in his possession or control a house trailer"

to register it and pay ad valorem taxes on it, it is clear that the taxes in question are upon mere ownership and possession of property, irrespective of whether the highways are used. See opinion below at Page 58 of the record in this case.

E. *The Federal and State Statutes as applied to the facts of this case.*

1. It is clear that if the property involved were furniture and not a house trailer, the immunity would apply. Indeed even if the property were a motor vehicle pure and simple, i.e., an automobile, the Mississippi ad valorem tax on motor vehicles would not apply. See §10007-21 Miss. Laws Appendix B, para. 3 and the interpretation thereof in Appendix E herein. However, the House Trailer Ad Valorem Tax Act, does not contain a similar exemption.

2. Thus, if the proviso contained in §574 (2) (b) did not exist, the issue in this case would never have arisen. Mississippi contends that the effect of the proviso is that if its terms are not met (i.e., payment of all licenses, fees and excises required by the home state) the *entirety* of the immunity falls including immunity from ad valorem property taxes. Petitioner contends that the proviso is not so broad and sweeping and that its effect is to prevent *only* the claim of immunity from "licenses, fees & excises" imposed by the host state when such are required by the home state and have not been paid.

3. As a matter of semantics, the proviso in §574 (2) (b) can be read either way. Therefore, the intent of Congress is the only issue in this case because Con-

gress has pre-empted the field of taxation of the personal property of servicemen and the constitutionality of this pre-emption was established in *Dameron v. Brodhead*, supra. Even if Mississippi had classified or identified its tax as an excise tax for the privilege of using the highways, this would make no difference. Congress has declared an immunity and *Dameron v. Brodhead* held that Congress was acting constitutionally. Therefore, the only issue is the intent of Congress and not the intent of Mississippi. Thus if Congress intended to exempt motor vehicles from ad valorem property taxes, it makes no difference what label is put upon the tax by Mississippi or how the amount of the tax is computed. The effect and nature of the tax is controlling, and the Congressional intent cannot be evaded by labels or other tax patterns designed to evade the fact that an ad valorem property tax is actually what is involved. If Congress intended to exempt motor vehicles from ad valorem taxes, no strategem (such as a pre-payment of ad valorem taxes as a prerequisite for obtaining registration) can be allowed to avoid the exemption. Congressional intent is the only question involved in this case.

4. It is submitted that Congress did not intend that the proviso should be applied so as to destroy the immunity otherwise granted to servicemen from ad valorem property taxes on motor vehicles.

(a) The history of §574 shows that Congress has always leaned toward liberality in favor of the servicemen. The amendments of 1942, 1944 and 1962, discussed supra, reveal this tendency.

(b) H.R. 4733 which became the 1944 amendment to

Section 514 (574) of the Soldiers' and Sailors' Civil Relief Act, was largely the recommended draft prepared by the Office of The Judge Advocate General, Army Service Forces, and submitted to the Chairman, Committee on Military Affairs, House of Representatives, 78th Congress, by a letter of transmittal from the Secretary of War on June 13, 1944. (See Appendix H, pp. 58-74) Of particular interest to an understanding of the true intent of Congress and what was meant by the terms "license, fee, or excise" as it appears in the statute is the letter from the Secretary of War to the Chairman of the Committee on Military Affairs, where the following appears:

> "It will be noted that 'personal property' is defined therein to include motor vehicles and that the term 'taxation' is defined to include *licenses* imposed in respect of motor vehicles or the use thereof provided that the *license* 'required by the State, Territory, possession or District of Columbia of which the person is a resident or in which he is domiciled has been paid'." (Appendix H, p. 71) (Italics added)

Of further significance, when considering this interpretation, is a letter from the official Army files, identified as a Memorandum For Director, Military Personnel Division, A.S.F., dated 18 May 1944, prepared for The Judge Advocate General found in Appendix H, pp. 66-67 where the following appears:

> "7. Attention is directed to the fact that 'personal property' is defined to include motor vehicles and that the term 'taxation' is defined to include *licenses* imposed in respect of motor

vehicles or the use thereof provided that the *license* 'required by the State, Territory, possession or District of Columbia of which the person is a resident or in which he is domiciled has been paid.' Note that this proviso omits any reference to payment to a 'political subdivision of any of the foregoing'; this was done advisedly as it was believed that a person in the military service should only be required to pay the *state* license in his state or residence as a prerequisite to being freed from the burden of paying automobile license taxes where he is stationed."

The historical material added in Appendix H, explains to some degree the void on this point in the Congressional Hearings on this amendment to Section 514 (574) of the Soldiers' and Sailors' Civil Relief Act of 1940.

(c) This court in *Dameron v. Brodhead* also recognized a Congressional intent toward liberality and refused to accept a narrow interpretation based on the premise that §574 was applicable only when double taxation would actually result unless immunity was granted. In *Le Maistre v. Leffers,* 333 U.S. 1 at p. 6, this court said that the provisions of the Soldiers' & Sailors' Civil Relief Act must be read "with an eye friendly to those who dropped their affairs to answer their country's call". In *U.S. v. Arlington County, Va.,* 326 F(2d) 929 (1964) the Circuit Court for the Fourth U. S. Circuit Court of Appeals held (without the benefit of the 1962 Amendment) that Arlington County, Virginia, could not impose an ad valorem property tax upon personal property owned by a serviceman, when the service-

man, a domiciliary of New Jersey, was serving under military orders at a place outside of Virginia and New Jersey, although his property was physically situated in Arlington County.

5. If Congress had intended that the prepayment of "licenses, fees and exercises" in the home state was a condition precedent for claiming immunity from ad valorem property taxes in the host state the proviso would have read:

> "Provided that the license, fee, excise *and* ad valorem taxes required by the state * * * wherein the person * * * is legally domiciled, has been paid."

6. It is submitted that the purpose of the proviso was to require constant identification with an individual person of property so highly mobile as motor vehicles. Other personal property such as furniture, electrical appliances, etc., are not usually registered or licensed because there is no necessity for the police control device supplied by registration and licensing; but there is such a necessity as to motor vehicles whose outstanding characteristic of mobility on highways requires prompt and easy identification with particular owners. Furniture, appliances, etc. are rarely involved in accidents on public highways; motor vehicles frequently are. It is submitted that Congress intended by the proviso (which is applicable only to motor vehicles) *simply* and *only* to require registration and licensing for identification purposes *either* in the *home* state or the *host* state.

7. Mississippi's contention is that there was a *further*

penalty for non-registration in the home state: viz., a loss of immunity from ad valorem property taxes which otherwise need not be paid in addition to the requirement that host state registration and licensing be accomplished. This is contrary to Mississippi's own tax pattern as to motor vehicles, for as has been pointed out above (sub-para. 1 of E), Mississippi law provides that if its road and bridge privilege tax is paid, ad valorem property taxes on exempt motor vehicles cannot be assessed or collected. In this situation motor vehicle *home state* registration and licensing have not been accomplished and thus Mississippi's interpretation of the proviso in §574(2b) in *this* case as to a trailer is contrary to its position as to motor vehicles. However, because the Mississippi House Trailer Ad Valorem Tax Act does not have a provision similar to the one in its Motor Vehicle Ad Valorem Tax Act, Mississippi contends that an *Act of Congress*, to wit: §574(2b) should be read differently in one case, i.e., motor vehicles, than it is in another, i.e., house trailers. It is submitted that Mississippi cannot manipulate for its own purpose the meaning and intent of an Act of Congress.

8. Finally, if there is any doubt about the Congressional intent, it should be resolved in favor of servicemen for whom Congress has over the years, in several amendments, clearly indicated that it intended to grant liberal immunity. There is no reason to believe that Congress intended to place the heavy burden of loss of immunity from ad valorem property taxes solely to achieve the purpose of police control identification which is easily obtainable only through registration and licensing. The proviso can, and should, be read simply to the effect that it withholds immunity from host state licensing and registration unless and until there is

home state licensing and registration. It is submitted that this is all that Congress intended.

POINT II.

ALTERNATIVELY, IF THE COURT SHOULD CONCLUDE THAT §574(1) DOES NOT DISPOSE OF THE CASE, AND THAT THEREFORE CONSIDERATION SHOULD BE GIVEN TO §574(2), PETITIONER SUBMITS THAT §574(2) IS INAPPLICABLE, BECAUSE A HOUSE TRAILER IS NOT A MOTOR VEHICLE.

A condition to the application of the proviso in Section 574(2) is that the license, fee, or excise in question is imposed on "motor vehicles". The petitioner's house trailer, while it does have wheels, is supported by concrete blocks and is not self-propelled. (R. 14, 24, 47.) The Attorney General in his opinion concluded without discussion that "The application [for refund] shows further that the property upon which the tax was paid is, in fact, a motor vehicle," citing the provisions of the 1962 house trailer tax act and the 1958 motor vehicle tax act. (R. 30, 31 and Appendix D, *infra*. There is no basis in either of these statutes for this conclusion.

Petitioner submits that house trailers are not *motor vehicles* within the common usage of that term. Since Section 574 does not specifically define *motor vehicles*, it is reasonable to assume that Congress did not intend to include within the definition of *motor vehicles* in the proviso, house trailers which, as in the instant case, are merely capable of being moved vis-a-vis those which are actually moved and using the public roads and highways. We contend that the definition of a *motor vehicle*, as used in the proviso of Section 574, is a

question not to be determined by State law, but by Federal law.

The text writer's definition of a motor vehicle, *i. e.*, a vehicle operated within itself and used for the purpose of carrying passengers or materials, generally includes all vehicles propelled by any power other than muscular power, except traction engines and such motor vehicles as run only upon rails or tracks. See Blashfield, Cyclopedia of Automobile Law and Practice, Perm. Ed., Ch. 1, §2. The definition has been implemented by a number of State courts to suit varying factual situations, none of which address themselves to the true posture of the facts in the instant case, except the Supreme Court of Mississippi in the decision below. Their conclusion that the definition of *house trailers* is conclusive and binding upon federal courts (R. 52) appears to merit further examination. The statutory basis for their decision, Section 10007-03(a) Motor Vehicle Ad Valorem Tax Act of 1958, c. 588, 7A Mississippi Code (1942), Recompiled (1952 Cum. Supp.), is quoted as follows:

> "The term 'motor vehicle' shall mean any device and attachments supported by one or more wheels which is propelled or drawn by any power, other than muscular power, over the highways, streets, or alleys of this state."

This definition appears to be unusually broad and is questioned by petitioner on the ground that it contravenes the more usual interpretations relied upon by courts over the years.

Courts are not unanimous in defining the term "motor vehicle". Definitions are as varied as the factual

situations requiring interpretation. For example, there are decisions which take the view that the term "motor vehicle" is synonymous with "automobile",[1] or "motor car",[2] and that it is self-propelled[3]. Others, that a "trailer" is not a "motor vehicle",[4] or the fact that it is drawn does not make a "trailer" a "motor vehicle".[5] One decision equates a "trailer" with a "motor vehicle" provided it is attached to and operated with an automobile which provides power[6]. In any event, the

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[1]The terms "motor vehicle" and "automobile", as used in various statutes relating to licensing and operation of automobiles and motor vehicles, are practically synonymous. Thompson v. Georgia Power Co., 37 S. E. 2d 622, 630, 73 Ga.App. 587.

[2]"Motor vehicle" is synonymous with "automobile" and "motor car" as used in Act Oct. 3, 1917, § 600(a), 40 Stat. 316, and Revenue Act 1918, § 900, 40 Stat. 1122, providing for their taxation and includes any self-propelled vehicle irrespective of the nature of its use, primarily used for transportation of persons or property other than the machine itself; automobile vehicle or mechanism; a specially self-propelled vehicle suitable for use on the street or roadway. American-La France Fire Engine Co. v. Riordan, D.C.N.Y., 294 F. 567, 571.

[3]The term "motor vehicle" ordinarily means a vehicle that is self-propelled as defined by statute. Prudential Ins. Co. of Great Britain v. Associated Emp. Lloyds, Tex.Civ. App., 250 S.W.2d 477, 479, 480.

[4]A trailer is not a "motor vehicle" within statute separately defining motor vehicles and trailers. State v. Harper, 184 S.W.2d 601, 605, 353 Mo. 821.

[5]The mere fact that trailer is hitched to and drawn by motor vehicle does not change its character as separate and distinct vehicle or make it a "motor vehicle". Hennessy v. Walker, 17 N.E.2d 782, 784, 785, 279 N.Y. 94, 119 A.L.R. 1029.

[6]Two-wheeled utility trailer designed for and employed in general highway transportation and attached to and operated as unit with automobile which provides operative power is "motor vehicle". Vest v. Kramer, 107 N.E.2d 105, 108, 158 Ohio St. 78.

Trailers and semitrailers are not "motor vehicles." Hennessy v. Walker, 17 N.E.2d 782, 784, 785, 279 N.Y. 94, 119 A.L.R. 1029.

Trailers and semitrailers transferred as an isolated or occasional sale by a nonretailer are not taxable under the Sales Tax

general connotation of a motor vehicle includes self-propulsion[7], or movement as a unit of locomotion and is suitable for use on a street or road[8], and does not run on a track or stationary rail[9]. One court chose to rely on a classic dictionary definition of automobile[10].

The lack of a special definition of the words "motor vehicles" in Section 574(2) thus implies that Congress employed them in their usual and customary sense. Moreover, the absence of qualifying words or special definition is particularly important in this situation because the statute, as a whole, is carefully drafted, utilizing precise language and special definitions. The Supreme Court of the United States in *Addison v. Holly Hill Co.*, 322 U. S. 607, when faced with a similar prob-

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Act, and are not included within the phrase "motor vehicle" as used in a Sales Tax Act, since a "motor vehicle" naturally connotes and suggests some sort of self-propulsion. Pacific Intermountain, Exp. Co. v. State Tax Commission of Utah, 329 P.2d 650, 652, 8 Utah 2d 144.

[7]A "motor vehicle" means any form of self propelled vehicle suitable for use on street or roadway. American Mut. Liability Ins. Co. v. Chaput, 60 A.2d 118, 120, 121, 95 N.H. 200.

[8]A "motor vehicle" in popular sense is a vehicle suitable for use on a street or roadway. Golding-Keene Co. v. Fidelity-Phenix Fire Ins. Co., 69 A.2d 856, 858, 96 N.H. 64.

[9]"Motor vehicle" is generic term for all classes of self-propelled vehicles not operating on stationary rails or tracks, and is broader than automobiles. *Jernigan v. Hanover Fire Ins. Co. of N.Y.*, 69 S.E.2d 847, 848, 235 N.C. 334.

[10]Webster's New Int. Dict. The term "automobile" has its derivation in the Greek "autos", meaning "self," and the Latin "mobilis," meaning "movable. "Automobile", therefore, means "self-moving". It may be defined as a wheeled vehicle propelled by steam, electricity, or gasoline, and used on highways and streets for the transportation of persons or merchandise. *Christy v. Elliott*, 216 Ill. 31, 74 NE 1035; *Hoover v. National Casualty Co.* 236 Mo. App. 1093, 162 SW2d 363.

lem of determining the meaning of common words used in a statute, noted that (pp. 617-618)—

> "the ultimate question is what has Congress commanded, when it was given no clue to its intentions except familiar English words and no hint by the draftsmen of the words that they meant to use them in any but an ordinary sense. * * * After all, legislation when not expressed in technical terms is addressed to the common run of men and is therefore to be understood according to the sense of the thing, as the ordinary man has a right to rely on ordinary words addressed to him."

Moreover, the provisions of the Soldiers' and Sailors' Civil Relief Act must be read, as the Supreme Court of the United States said in *Le Maistre v. Leffers*, 333 U. S. 1, 6, "with an eye friendly to those who dropped their affairs to answer their country's call."

Petitioner submits that the Supreme Court of Mississippi erred when it concluded that the definition of motor vehicles in other Federal statutes included house trailers. It is clear from each statute cited that "movement" is an essential element in each definition of the words "motor vehicle"; and that mere capability of being moved does not bring the object within the meaning of the definition. Thus:

A. In 40 U.S.C. 472(1) (this is the federal statute pertaining to Management and Disposal of Government property) the term "motor vehicle" is defined to include any vehicle self-propelled or drawn, but the definition goes on to state that the vehicle must be "designed and operated principally for highway transportation."

B. In 49 U.S.C. 303, Interstate Commerce Act, Part II,; Motor Carriers, (this is the statute dealing with motor carriers in interstate commerce), the term "motor vehicle" is defined to include a trailer, but the definition goes on to make clear that it must be "propelled or drawn by a mechanical power and used upon the highways".

C. In 18 U.S.C. 31 (this statute deals with destruction of Aircraft and Motor Vehicles), in defining the term "motor vehicle", it is specifically provided that the object must be "propelled or drawn by mechanical power . . . on the highways in the transportation of passengers and property".

Petitioner submits that a better example to illustrate that movement on highways is intended by Congress whenever it used the term "motor vehicle" is 18 U.S.C. 2311 (Interstate transportation of stolen property), which defines the term "motor vehicle" among other things as "any other self-propelled vehicle designed for running on land."

In this statute, commonly identified as the Dyer Act, Congress defined "motor vehicle" recognizing that it was a highly mobile and potentially dangerous instrument or vehicle of social and economic force which required strict means of police control; identification with a specific owner at all times; an immediate and convenient reference record; and some form of registration recognition. These characteristics require police power control measures which are necessary and proper to maintain a legitimate and orderly surveillance over vehicular mechanisms capable of travelling great distances under their own power us-

ing public roads and highways. Petitioner submits that these objectives are analagous to those of the State of Mississippi and this definition of a "motor vehicle" more nearly coincides with what Congress intended when they referred to the term "motor vehicles" in the proviso in Section 574 (2) (b). In this connection, compare sub-paragraph 6, Paragraph E of Point I, *supra*.

It is submitted, therefore, that the Supreme Court of Mississippi erred when it concluded that those federal statutes which are in pari materia impel the conclusion that the term "motor vehicle" whenever used by Congress includes a house trailer which has not, as in this case, been moved over the highways at all during the taxable period.

POINT III.

ALTERNATIVELY, IF A HOUSE TRAILER IS A MOTOR VEHICLE WITHIN THE MEANING OF §574(2) THEN THE PROVISO OF THIS SECOND PARAGRAPH DOES NOT APPLY BECAUSE THE STATE OF SOUTH CAROLINA, WHICH IS PETITIONER'S DOMICILE, REQUIRES NO PAYMENT OF TAX OF ANY SORT UNLESS THE VEHICLE OPERATES OR MOVES ON THE HIGHWAYS OF SOUTH CAROLINA.

A further condition to the application of the proviso in Section 574(2)(b) is that the serviceman has failed to pay licenses, fees, or excises imposed on his motor vehicle by the state of his residence or domicile. The fact that the petitioner is a resident and domiciliary of the State of South Carolina (R. 13,15) has been accepted without question by the Attorney General (R. 30). It is also clear that the petitioner has never regis-

tered his house trailer, or paid any taxes on it to the State of South Carolina or to any other state. (R. 13, 26.) However, the Attorney General found that South Carolina required each house trailer to be registered and licensed, and a registration fee paid on it, that the petitioner had failed to pay, and that under Section 574(2) he was therefore not covered by the exemption and was liable for the tax paid. (R. 30, 31). The Chancellor agreed with this conclusion, (R. 40) relying on the opinion of the Attorney General and the authorities referred to there, and, in addition, on Section 46-100, 10 Code of Laws of South Carolina 1962 (1962 Supp.) (Appendix C, *infra*).

The Supreme Court of Mississippi erroneously concluded that the proviso of §574(2)(b) required that petitioner *register* his house trailer with South Carolina authorities before he could claim immunity from the Mississippi ad vallorem tax. However, §574(2)(b) does not deal with registration at all, but with *payment* of "licenses, fees or excises" — *when required.* But under the facts of this case South Carolina did not require the payment of any fees, licenses or excises.

Under South Carolina law, "Every * * * trailer * * * operated or moved upon a highway in this State shall be registered and licensed * * *" 10 Code of Laws of South Carolina (1962), Sec. 46-11 (Appendix C, *infra).* The annual license fee for such a house trailer is $6. Section 46-35.3, 10 Code of Laws of South Carolina (1962) (Appendix C, *infra).* Section 46-100, 10 Code of Laws of South Carolina 1962 (1962 Supp.) states that "Within fifteen days after bringing a mobile home or house trailer into this State, or the purchase of a mobile home or house trailer in this State, for dwelling

purposes," the owner shall obtain a license from the county. The annual license fee under this provision is $2. Section 46-100.2, 10 Code of Laws of South Carolina (1962) (1962 Cum. Supp.) Appendix C, *infra*). However, a house trailer which is licensed by the South Carolina State Highway Department under Section 46-11 is exempted from the registration requirement of Section 46-100. Section 46-100.4, 10 Code of Laws of South Carolina (1962) (1962 Cum. Supp.) (Appendix C, *infra*).

By means of the statutory provisions outlined above the State of South Carolina has dealt with two groups of house trailers—(1) those "operated or moved upon a highway" in South Carolina, and (2) those brought into South Carolina or purchased in that state which are not used on the highways. However, the house trailer of the appellant was purchased in the State of Mississippi (R. 13, 25, 47) and has never been out of this state. (R. 53.) Since it has never been taken into the State of South Carolina and has never been moved or drawn over the highways of that state, it is not covered by the license, fee, or excise requirements established by the State of South Carolina. The petitioner, therefore, has not failed to pay any licenses, fees, or excise imposed on his house trailer by South Carolina because that state has not established any such requirements for house trailers such as the petitioner's.

The fact that the State of South Carolina has not imposed licenses, fees, or excises on house trailers such as the petitioner's is not an authorization to the State of Mississippi to do so. In *Dameron v. Brodhead*, 345 U. S. 322, the Supreme Court of the United States considered that very question and rejected the contention that a taxing jurisdiction could step into the

void resulting from the non-action by the state of residence or domicile. The Court held that Section 574 forbade the collection of a personal property tax when the state of the taxpayer's residence and domicile had levied none, noting that the statute plainly provided that (p. 326)—

> " 'personal property shall not be deemed to be located or present in or to have a situs for taxation' in the state of temporary presence in any case. There is no suggestion that the state of original residence must have imposed a property tax. Since the language of the section does not establish a condition to its application, we would not be justified in doing so."

It must be concluded that since South Carolina has imposed no license, fee, or excise on the petitioner's house trailer, he did not, within the meaning of the proviso in Section 574(2)(b), fail to pay "the license, fee, or excise required by the State * * * of which the person is a resident" or a domiciliary. Section 574(1), therefore, is applicable to bar the taxes in question.

POINT IV.

THE DECISION OF THE SUPREME COURT OF MISSISSIPPI MISCONSTRUES, MISINTERPRETS OR IGNORES THE BASIC REASONING OF DAMERON V. BRODHEAD.

The decision of this Court in the case of *Dameron v. Brodhead*, supra, established the following:

a) Congress has the authority to constitutionally exempt servicemen from burdens of taxation by states in which they may be required to be present by virtue of their military service.

b) Immunity from taxation of personal property by the host state exists even though the home state imposes no tax; therefore the immunity is not contingent on the possibility of double taxation.

c) There should be liberality in interpreting the statute.

The Supreme Court of Mississippi, in the decision below, concedes that Congress has the authority to legislate in this field and that the Act bars the imposition by any state of ad valorem personal property taxes on personal property owned by a non-resident serviceman. (R. 50). However, Mississippi construes Section 574(2)(b) so as to add an exception to this general prohibition. It is at this point that Mississippi has misconstrued, misinterpreted, or ignored the reasoning of this Court in the *Dameron* case. It has construed Section 574 narrowly rather than liberally, and it has resorted to the double taxation possibility as a requirement for the existence of immunity. It is submitted that this approach is contra to *Dameron v. Brodhead.*

CONCLUSION

In the light of the foregoing, it is respectfully submitted that Judgment of the Mississippi Supreme Court should be reversed.

Respectfully submitted,

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CERTIFICATE

It is hereby certified that service of the foregoing brief has this ____ day of August, 1965, been made on counsel for the Respondents by depositing a copy thereof, postage prepaid, in the United States mails, properly addressed to him as follows:

Honorable Joe T. Patterson
Attorney General of the State of Mississippi
Jackson 5, Mississippi

Leon D. Hubert, Jr.,
Counsel for Petitioner

APPENDIX A

Soldiers' and Sailors' Civil Relief Act of 1940, c. 888, 54 Stat. 1178:

SEC. 514 [as added by Sec. 17, Soldiers' and Sailors' Civil Relief Act Amendments of 1942, C. 581, 56 Stat. 769; and as amended by Sec. 1, Act of July 3, 1944, c. 397, 58 Stat. 722; and Act of October 9, 1962, P. L. 87-771, 76 Stat. 768].

(1) For the purposes of taxation in respect of any person, or of his personal property, income, or gross income, by any State, Territory, possession, or political subdivision of any of the foregoing, or by the District of Columbia, such person shall not be deemed to have lost a residence or domicile in any State, Territory, possession, or political subdivision of any of the foregoing, or in the District of Columbia, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, while, and solely by reason of being, so absent. For the purposes of taxation in respect of the personal property, income, or gross income of any such persons by any State, Territory, possession or political subdivision of any of the foregoing, or the District of Columbia, of which such person is not a resident or in which he is not domiciled, compensation for military or naval service shall not be deemed income for services performed within, or from sources within, such State, Territory, possession, political subdivision, or District, and personal property shall

not be deemed to be located or present in or to have a situs for taxation in such State, Territory, possession, or political subdivision, or district. *Where the owner of personal property is absent from his residence or domicile solely by reason of compliance with military or naval orders, this section applies with respect to personal property, or the use thereof, within any tax jurisdiction other than such place of residence or domicile, regardless of where the owner may be serving in compliance with such orders:** *Provided,* that nothing contained in this section shall prevent taxation by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia in respect to personal property used in or arising from a trade or business, if it otherwise has jurisdiction. This section shall be effective as of September 8, 1939, except that it shall not require the crediting or refunding of any tax paid prior to October 6, 1942.

(2) When used in this section, (a) the term 'personal property' shall include tangible and intangible property (including motor vehicles), and (b) the term 'taxation' shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles or the use thereof: *Provided,* That the license, fee, or excise required by the State, Territory, possession, or District of Columbia of which the person is a resident or in which he is domiciled has been paid.

*Italics show 1962 Amendment.

(50 U.S.C. Appendix 1958 ed., Sec. 574.)

APPENDIX B

1. *7A Mississippi Code 1942, Recompiled:*

§ 9883. *Ad valorem tax — municipal general levy. —*

Municipalities may levy taxes in an amount not exceeding fifteen (15) mills on the dollar of the assessed valuation of all taxable property within such municipality for general revenue purposes and for general improvements. Provided, however, the governing authorities of any municipality may make additional levies for special purposes as authorized by law, provided the aggregate of all such special levies does not exceed the limitation prescribed therefor by law.

* * * *

2. *7A Mississippi Code 1942, Recompiled (1962 Cum. Supp.):*

§ 9877. *State ad valorem tax levy.*

A state ad valorem tax of four (4) mills on the dollar for the year 1958 and for each year thereafter is hereby levied on all taxable property in the State of Mississippi.

* * * *

§ 9879. *Ad valorem taxes — general county levy.*

(1) The board of supervisors of any county is hereby empowered to levy ad valorem taxes on taxable property in the respective counties in any one year,

as shown by the assessment roll containing assessments of property made as of January first of the year, and the assessment of motor vehicles as made according to the provisions of the "Motor Vehicle Ad Valorem Tax Act of 1958" [§§ 10007-01 et seq.], for all general county purposes, exclusive only of levies for roads and bridges and schools, at the rate herein specified, but not in excess of the following amounts or rates:

* * * *

3. *Motor Vehicle Ad Valorem Tax Act of 1958, c. 588, 7A Mississippi Code (1942), Recompiled (1962 Cum. Supp.):*

§ 10007-02. *Purpose of Act.*

The purpose of this act is, with reference to assessing ad valorem taxes on motor vehicles which are operated upon the public highways of this state, to, (a) fix the taxable year, (b) fix the tax lien date, (c) determine the method of assessing, (d) fix the date for assessing such taxes, (e) prescribe the method of collecting such taxes, and (f) to fix the date of collecting such taxes.

§ 10007-03. *Definitions.*

The subject words and terms of this section for the purpose of this Act, shall have meanings as follows:

(a) The term "motor vehicle" shall mean any device and attachments supported by one or more wheels which is propelled or drawn by any power, other than

muscular power, over the highways, streets, or alleys of this state.

* * * *

§10007-04. *Who is liable for tax — time of payment — due date.*

Any person required by law to pay a road and bridge privilege license tax on any motor vehicle shall also be liable for the ad valorem taxes due on such motor vehicle, unless otherwise specifically exempt herein. Such ad valorem taxes due shall be paid at the same time the road and bridge privilege license * * * * tax is paid, and the payment of the said ad valorem taxes due shall be a prerequisite to the issuance of the said road and bridge privilege license.

* * * *

§10007-05. *Taxable and fiscal years — taxes to be collected by county and municipal tax collectors — when to be paid.*

For the purpose of this act the taxable year and fiscal year shall commence each year on November first and shall end on October thirty-first of the following year, and such taxable year shall run concurrently with the taxable year now in effect in the law pertaining to the payment of the road and bridge privilege license tax on motor vehicles. Ad valorem taxes on motor vehicles shall be collected by the county tax collector for the county and state and by the municipal tax collector for the municipalities and municipal separate school districts. Ad valorem taxes for any ensuing year may

be paid during the month of October, however, and said ad valorem taxes on any motor vehicle must be paid at the same time or prior to the time that the road and bridge privilege license is issued for the subject motor vehicle, unless herein otherwise specifically exempt from such ad valorem taxes.

In cases where the privilege tax is not due on a motor vehicle prior to November thirtieth then the ad valorem taxes due on such motor vehicle shall be calculated for only the proportional part of the taxable year remaining, prorated from the first day of the month on which said taxes are due.

§ 10007-08. *How Assessed Value is Determined.*

Motor vehicles shall be assessed uniformly according to value and such assessed value shall be determined by an assessment schedule which shall be prepared and made of minute record by the state tax commission and shall be certified to the president of the board of supervisors of the various counties of the state, and to the mayor or the presiding officer of the municipal boards of the various municipalities, and municipal separate school districts of the state, in care of the clerk of said respective boards, as the official motor vehicle assessment schedule which shall be used by the proper officials of both respective jurisdictions in assessing motor vehicle ad valorem taxes for the ensuing fiscal year.

§ 10007-21. *Exemptions and credits — penalty for violation of section.*

* * * *

Any motor vehicle driven over the highways of this state to the extent that the owner of such motor vehicle is required to purchase a road and bridge privilege license in this state, yet the legal situs of such motor vehicle is located in another state, shall be exempt from ad valorem taxes authorized by this act.

* * * *

4. *House Trailer Ad Valorem Tax Act, Laws 1962, c. 535, 7A Mississippi Code (1942), Recompiled (1962 Cum. Supp.):*

§ 10007-51. *Purpose of Act.*

The purpose of this act is, with reference to assessing and collecting ad valorem taxes on house trailers, to (a) fix the taxable year, (b) fix the lien date, (c) determine the method of assessing, (d) fix the dates for assessing such taxes, (e) prescribe the method of collecting such taxes, and (f) to fix the dates for collecting such taxes.

§ 10007-52. *Definitions.*

The subject words and terms of this section, for the purposes of this act, shall have meanings as follows:

(a) The term "house trailer" shall mean and include any trailer-type vehicle or mobile home, designed and constructed so as to be suitable for use for domestic, commercial, or industrial purposes, and which is constructed so that it may be moved from place to place over the highways and streets by being supported by two (2) or more wheels, and drawn or

moved by motive power not its own, and which house trailer is not taxed under authority of chapter 588, laws of 1958 [§§ 10007-01 et seq.].

(b) The term "person" shalll mean any natural person, agency, firm, copartnership, corporation, joint stock, or other association or organization.

§ 10007-53. *Registration fee — report and payment — proration of tax.*

Any person owning, occupying, using, or having in his possession or control a house trailer shall, not later than the last day of November each year, register such house trailer with the sheriff of the county in which it is located on such date. At the time such registration is made, and before a registration certificate and label may be issued, the said owner, occupant, user, possessor, or controller of said house trailer shall pay a registration fee of two dollars and fifty cents ($2.50) together with all ad valorem taxes due on said house trailer for the then fiscal year. Fifty cents (50c) of this fee shall be retained by the sheriff, one dollar ($1.00) shall be paid into the general county fund, and one dollar ($1.00) of this fee shall be forwarded to the tax commission to cover cost of labels, tax receipt forms, etc., as hereinafter provided.

* * * *

§ 10007-54. *Taxable and fiscal year — tax lien date — trailer brought into state.*

For the purpose of this act the taxable and fiscal year shall commence each year on November first and

shall end on October thirty-first of the following calendar year. The tax lien date shall also be November first for a house trailer owned on that date.

The date of purchase of a house trailer during the fiscal year shall constitute the tax lien date for such vehicle and the ad valorem taxes will be calculated on a pro rata basis.

A person bringing such a house trailer into this state, on which the taxes have already been paid in another state, shall be allowed thirty (30) days in which to pay the tax in this state.

§ 10007-57. *Assessed value of house trailer — collection and assessment of municipal taxes — exceptions to assessment schedule.*

The assessed value of house trailers as set out in the assessment schedule provided for by chapter 588, laws of 1958 [§§ 10007-01 et seq.], as amended, shall be used by the sheriff in assessing and collecting ad valorem taxes on said house trailers....

§§ 10007-58. *Exemptions.*

(a) House trailers which are already taxed under authority of chapter 588, Laws of 1958 [§§ 10007-01 et seq.], are exempt from the taxes authorized by this act.

* * * *

(c) If any vehicle defined in this act is used or is to be used upon the streets and highways of this State

after the tax, as set out in this act, has been paid, then the sheriff shall exempt such vehicle from further ad valorem taxes for the remaining portion of the current fiscal year in issuing a road and bridge privilege license for such vehicle.

* * * *

§ 10007-10. Assessment Schedule to be prepared by state tax commission—basis of schedule—corrections.

The state tax commission shall, on or before the fifteenth day of June of each year, prepare and adopt, by minute record, an assessment schedule of motor vehicles, as defined in this act, which such assessment schedule, and no other, excepting as may be hereinafter provided, shall be used by the tax collector of each county and each municipality and municipal separate school district in the state, in assessing, calculating and collecting ad valorem taxes in each respective jurisdiction on all motor vehicles liable for such tax as authorized by this act.

In preparing the said assessment schedule the tax commission may make use of, as a base, the value of the various makes, models, year of manufacture, and types of motor vehicles as adopted by some reputable nation-wide agency or association which regularly compiles and furnishes such information as to actual value of the different motor vehicles as to make, model, type, and year of manufacture, or by any other method or methods or combination of methods which in its judgment will tend to equalize the assessed value of property of this classs with property of other classes in general. These various motor vehicles, together with any

special equipment, may be grouped into as many categories as, in the judgment of the tax commission, will be most practical in effecting equalization. Vehicles of a manufactured year model next succeeding the adoption of such schedule shall be assessed at a value which is twenty per cent (20%) higher than that at which the latest and most similar model is assessed for as set out in the schedule.

In preparing the said assessment schedule the tax commission shall apply such a percentage to the base value of such motor vehicles which, in its best judgment, will produce an assessed value which will equalize the assessed value of motor vehicles with the assessed value of other property in general, throughout the state, so far as is practical.

The tax commission shall also make necessary corrections and amendments to this schedule from time to time throughout the fiscal year, and in so doing the general procedure set out above shall be followed.

SOURCES: Laws, 1958, ch. 588, § 10; 1960, ch. 473, §1.

CROSS REFERENCES: House Trailer Ad Valorem Taxes § 10007-57; Sheriffs § 4266; State Tax Commission § 9198.

APPENDIX C

1. 10 Code of Laws of South Carolina 1962:

§ 46.2. *Definitions of words and phrases.* — The following words and phrases when used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them in this section, to wit:

(1) *"Vehicle:"* Every device in, upon or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human power or used exclusively upon stationary rails or tracks;

(2) *"Motor Vehicle:"* Every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails;

* * * *

(13) *"Trailer:"* Every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle;

§ 46-11. *Vehicles required to be registered and licensed.* — Every motor vehicle, trailer, semitrailer, pole trailer and special mobile equipment vehicle driven, operated or moved upon a highway in this State shall be registered and licensed in accordance

with the provisions of this chapter. It shall be a misdemeanor for any person to drive, operate or move upon a highway or for the owner knowingly to permit to be driven, operated or moved upon a highway any such vehicle which is not registered and licensed and the required fee paid as provided for in this chapter. (1952 Code § 46-11; 1949 (46) 342.)

§ 46-35.3. *Fees for house trailers.* — For every house trailer, the annual fee shall be six dollars. The Department shall classify as a *"house trailer"* every trailer or semitrailer which is designed, constructed and equipped as a dwelling, living abode, or sleeping place, either permanently or temporarily, and is equipped for use as a conveyance on streets or highways, or a trailer or semitrailer of similar nature whose chassis and exterior shell is designed and constructed for use either permanently or temporarily for advertising, sales, display or promotion of merchandise or services or for any other commercial purpose, except the transportation of property for hire or the transportation of property for distribution by a private carrier. The Department may not license and register a house trailer which exceeds the permissible size limitations prescribed in §§ 46-654, 46-657 and 46-657.1, but such house trailers which may be permitted to be moved over the highways by the Department under special permits issued pursuant to §§ 46-667 to 46-667.3 shall pay to the Department a fee of five dollars per trip. (1952 Code § 46-35; 1949 (46) 342; 1959 (51) 391.)

2. 10 Code of Laws of South Carolina 1962 (1962 Supp.):

§ 46-100. *Mobile homes and house trailers to be*

licensed. — Within fifteen days after bringing a mobile home or house trailer into this State, or the purchase of a mobile home or house trailer in this State, for dwelling purposes, the owner shall obtain a license from the governing body of the county or its designated agent. (1962 (52) 2181.)

§ 46-100.1. *Not to be licensed unless taxes paid.* — No mobile home or house trailer, except those owned or stocked by dealers for resale, may be registered and licensed unless a signed statement accompanies the application certifying that all county and municipal taxes legally due by the applicant during the preceding year have been paid, if such mobile home or house trailer were subject to any such tax. A transfer between members of the same family shall not, for the purpose of this article, be considered a bona fide purchase. (1962 (52) 2181.)

* * * *

§ 46-100.2. *Period of license; form; fee.* — The license required under the provisions of this article shall be good for a period of one year beginning on the first day of each year. Licenses issued between July first and December thirty-first shall be issued for one half the annual rate. The license shall be of such form as shall be prescribed by the Tax Commission and shall be displayed on the mobile home or house trailer so as to be clearly and readily visible from the outside. The annual license fee shall be two dollars. (1962 (52) 2181.)

§ 46-100.4. *Article not applicable if trailer licensed by Department.* — The provisions of this article shall not be applicable if the mobile home or house trailer is licensed by the Department. (1962 (52) 2181.)

APPENDIX D

The opinion of the Attorney General of the State of Mississippi in this case is as follows (R. 36-38):

[Formal parts omitted]
April 4, 1963

Mr. W. D. Neal
State Auditor of Public Accounts
New Capitol Building
Jackson, Mississippi

Re: Application for tax refund of Sgt. Jesse E. Snapp, Box 539, Crystal Springs, Mississippi

Dear Mr. Neal:

The above-styled application for tax refund is based upon an alleged exemption granted by *50 USC App.* 574. The provisions of that federal statute deemed pertinent to this application provide as follows:

[Section 514 of the Soldiers' & Sailors' Civil Relief Act of 1940, as amended, is omitted.]

It will be noted that the federal statute in question does not grant an exception from taxation, but it creates a legal fiction that personal property of a serviceman shall not be deemed to have lost its situs in his home state and acquired a situs where it is, in fact, physically located. As regards all other items of per-

sonal property, except motor vehicles, the legal fiction thus created is a bar to taxation by a state other than the state of the domicile of the serviceman. *Dameron vs. Brodhead,* 345 U. S. 322, 97 L. ed. 1041.

However, the statute itself provides that in order for the legal fiction to be effective, insofar as motor vehicles are concerned, the serviceman must have paid taxes in the state in which he is a resident or domiciled.

This application shows conclusively that no taxes have been paid on this house trailer in any state other than the taxes for which this application for refund is made. The application shows further that the property upon which the tax was paid is, in fact, a motor vehicle. *Chapter 535 (H.B. #747), Laws of 1962* and *Chapter 588, Laws of 1958.*

The State of South Carolina wherein the applicant is domiciled requires that each trailer, including "house trailers," shall be registered, licensed and a registration fee paid thereon. *Sections 46-2 (13), 46-11* and *46-35.3, Code of Laws of South Carolina 1962.*

The application shows further that the applicant has failed and refused to register his house trailer under the provisions of *Chapter 588, Laws of 1958,* which said statute grants to him an exemption from the payment of ad valorem taxes because of the legal fiction created by 50 *USC App.* 574. Biennial Report of the Attorney General of the State of Mississippi 1957-59, pages 99, a copy of which is attached hereto.

From the foregoing, it is the opinion of this office that

the taxpayer was and is liable for the tax paid. Which said payment was made by his own election not to register his motor vehicle in the state of his domicile thereby failing to bring himself within the provisions of the federal statute, or by avoiding the tax by registering his motor vehicle under a statute of this state under which the payment of the taxes is not required. *Whiting vs. City of Portsmouth*, 202 Va. 609, 118 SE 2d 505, supports this view.

It follows that this application for refund should be and the same is hereby disapproved.

Sincerely yours,

JOE T. PATTERSON, ATTORNEY GENERAL
By Martin R. McLendon
Assistant Attorney General

APPENDIX E

Opinion of the Attorney General of the State of Mississippi, dated July 11, 1958, Biennial Report of the Attorney General of Mississippi, 1957-1959, pp. 99-100, is as follows:

This is in reply to yours of July 2, 1958, wherein you ask whether or not personal automobiles of members of the armed forces stationed in your city are exempt from state, county, and municipal ad valorem taxes whether the tag is bought in this state or another state.

Section 574, Title 50, USCA, provides that when a member of the armed forces is in any state in compliance with military or naval orders his ". . . personal property shall not be deemed to be located or present in or to have status for taxes in such state. . ." Section 21 of House Bill No. 3, of the Regular Session of 1958 [Section 10007-21 (Appendix B4, *supra*)], provides "Any motor vehicle driven over the highways of this state to the extent that the owner of such motor vehicle is required to purchase a road and bridge privilege license in that state, yet the legal situs of such motor vehicle is located in another state, shall be exempt from ad valorem taxes authorized by this act."

It is, therefore, the opinion of this office that members of the armed forces of the United States who are nonresidents of the State of Mississippi and who are residing in your community in compliance with military or naval orders are exempt from the payment of ad valorem taxes imposed by House Bill No. 3, supra, whether they pay the road and bridge privilege license tax and purchase their license plates in Mississippi or not, provided the automobile in question is not used in any way for a trade or business.

APPENDIX F

1. S. Rep. No. 959, 78th Cong., 2d Sess., pp 1-5:

The Committee on Military Affairs, to whom was referred the bill, H. R. 4733, to amend section 514 of the Soldiers' and Sailors' Civil Relief Act, having considered the same, submit the following report thereon, with the recommendation that it do pass.

The purpose of the proposed legislation is to clarify the intent of section 514 of the Soldiers' and Sailors' Civil Relief Act as added by section 17 of the act of October 6, 1942 (56 Stat. 769, 777). When that provision of law was added to the act to relieve persons in service from liability of double taxation by being moved from one State to another under orders, it was intended that it should apply to personal-property taxes as well as to income taxes. As presently constituted, it primarily affects taxes in respect to income and other taxes based on residence or domicile, but it does not prevent the State of "temporary residence" from taxing tangible personal property actually located in such State so long as the tax does not depend on residence or domicile. A few States have taken the position that tangible personal property of military personnel who are only temporarily within their jurisdiction does not acquire a situs for taxation,

but it has been held that section 514 of the act as now written does not affect the right of a State to assess personal-property taxes on property within its jurisdiction. The result has been that servicemen find themselves at times subjected to personal-property taxes on the same property in more than one State during the same calendar year by reason of being moved under orders.

Your committee considers [illegible] the existing law pertaining to State taxation of the personal property of persons in military service present in the various States in compliance with military orders should be clarified; that the military personnel concerned should not be subjected to multiple taxation of personal property by the various States and should be given the same protection as to personal property taxes as is now provided in respect of income taxes.

Letter of the War Department follows:

War Department,
Washington, June 9, 1944.

Hon. Robert R. Reynolds,
Chairman, Committee on Military Affairs, United States Senate.

DEAR SENATOR REYNOLDS: The War Department has no objection to the enact-

ment of H. R. 4733, Seventy-eighth Congress, an act to amend section 514 of the Soldiers' and Sailors' Relief Act.

The purpose of the proposed legislation is to prevent the multiple taxation of the personal property of military personnel by the various States, which it is understood was one of the purposes of section 514 of the Soldiers' and Sailors' Civil Relief Act as added by the act of October 6, 1942 (56 Stat. 769, 777).

As presently worded, section 514 of the act primarily affects taxes in respect of income and other taxes based on residence or domicile. Nothing in that section prevents the State of "temporary residence" from taxing tangible personal property actually located in such State, so long as the tax does not depend on residence or domicile. A few States, however, have taken the position that tangible personal property of military personnel who are only temporarily within their jurisdictions does not acquire a situs for taxation.

The proposed legislation will not result in any additional cost to the Government.

The Bureau of the Budget advised with respect to a similar report on H. R. 4733 to the Committee on Military Affairs, House of Representatives, that there was

no objection to its submission to the Congress.

Sincerely yours,

HENRY L. STIMSON,
Secretary of War.

The report of the House Military Affairs Committee (Rept. No. 1514) is appended hereto and made a part of this report.

2. H. Rep. No. 1514, 78th Cong., 2d sess., pp. 1-2:

The Committee on Military Affairs, to whom was referred the bill (H. R. 4733) to amend section 541 of the Soldiers' and Sailors' Relief Act, having considered the same, submit the following report thereon, with the recommendation that it do pass with the following amendment:

Strike out all after the enacting clause and insert the following language:

[Here follows Sec. 514, as amended by the Act of July 3, 1944, *supra*.]

GENERAL COMMENT

When the Soldiers' and Sailors' Civil Relief Act of 1940 was amended by the act of October 6, 1942, a provision was written into the act to relieve persons in the serv-

ice from liability of double taxation by being moved from one State to another under orders. It was intended that this should apply to personal property taxes as well as income taxes. However, it has been held that under the wording of such amendment personal property taxes were not included. The result has been that servicemen find themselves at times subjected to personal property taxes in more than one State by reason of being moved under orders.

The purpose of the present act is to correct this situation and to give to the servicemen the same protection as to personal property taxes that they now have as to income taxes.

APPENDIX G

2. Act of July 3, 1944, c. 397, 58 Stat. 722:

* * * That section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940 (54 Stat. 1179), as added by the Soldiers' and Sailors' Civil Relief Act Amendments of 1942 (56 Stat. 769), is amended to read as follows.*

"Sec. 514. (1) For the purposes of taxation in respect of any person, or of his *personal* property, income, or gross income, by any State, Territory, possession, or political subdivision of any of the foregoing, or by the District of Columbia, such person shall not be deemed to have lost a residence or domicile in any State, Territory, possession, or political subdivision of any of the foregoing, or in the District of Columbia, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, while, and solely by reason of being, so absent. For the purposes of taxation

*For the Court's convenience, we have italicized the provisions of Section 514 which were added to it by the 1944 Act. In other words, the unitalicized portions constitute Section 514 as it was enacted in 1942 and as it stood prior to the amendments made by the 1944 Act.

in respect of the *personal* property income, or gross income of any such person by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, of which such person is not a resident or in which he is not domiciled, compensation for military or naval service shall not be deemed income for services performed within, or from sources within, such State, Territory, possession, political subdivision, or District, *and personal property shall not be deemed to be located or present in or to have a situs for taxation in such State, Territory, possession, or political subdivision, or district: Provided, That nothing contained in this section shall prevent taxation by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia in respect of personal property used in or arising from a trade or business, if it otherwise has jurisdiction.* This section shall be effective as of September 8, 1939, except that it shall not require the crediting or refunding of any tax paid prior to *October 6, 1942.*

"(2) When used in this section, (a) the term 'personal property' shall include tangible and intangible property (including motor vehicles), and (b) the term 'taxation' shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles or the use thereof: Provided, That the license, fee, or excise re-

quired by the State, Territory, possession, or District of Columbia of which the person is a resident or in which he is domiciled has been paid."

(50 U. S. C. App., 1946 ed., Sec. 574.)

Sec. 2. Nothing contained in this Act shall be construed to require the crediting or refunding of any tax in respect of tangible personal property (including licenses, fees, or excise imposed in respect of motor vehicles or the use thereof) paid prior to the date of its enactment.

(50 U. S. C. App., 1946 ed., Sec. 574 note.)

WAR DEPARTMENT
ARMY SERVICE FORCES

TRANSMITTAL SHEET

TO	Office of The Judge Advocate General, Rm. 2057 Munitions Building (Service, division, or organization) (Location)
DESCRIPTION OF ATTACHED COMMUNICATION	(Branch or unit) (Attention) (Originator) (Addressee) (Date) H. R. 4733 - amend sec. 514 of Soldiers' & Sailors' Relief Act.' (Subject) (File No.)
FROM	Military Personnel Div., ASF Rm. 4B-470 Pentagon WDP - 4387 (Service, division, or organization) (Location) (Telephone)

SPGAL/011 Gen (6 May 44)-124 6 May 1944

1. There is attached a copy of H. R. 4733, a bill "To amend section 514 of the Soldiers' and Sailors' Relief Act", upon which the views of the War Department have been requested by the Chairman, House Military Affairs Committee.

2. Your remarks and recommendations are requested, particularly as to any changes in existing law that would be accomplished by the enactment of the attached bill.

RUSSEL B. REYNOLDS
Brigadier General, General Staff Corps
Director, Military Personnel Division

Incl.
~~cy H.R. 4733.~~

C. S. Alston

C. S. ALSTON
Major, Infantry
Asst. Exec., Military Personnel Division

APPENDIX H
PART I
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W. D., A. G. O. Form No. 0105
April 7, 1943

U. S. GOVERNMENT PRINTING OFFICE O—619134

78TH CONGRESS
2D SESSION

H. R. 4733

IN THE HOUSE OF REPRESENTATIVES

MAY 2, 1944

Mr. SPARKMAN introduced the following bill; which was referred to the Committee on Military Affairs

A BILL

To amend section 514 of the Soldiers' and Sailors' Relief Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940 (54 Stat. 1179), as added by the Soldiers' and Sailors' Civil Relief Act Amendments of 1942 (56 Stat. 769), is hereby amended to read as follows:

"SEC. 514. (1) The income, gross receipts, and personal property, tangible or intangible (including automotive vehicles), of any person in the military service shall not be subject to taxation by any State, Territory, possession, political subdivision thereof, or the District of Columbia, by reason of (a)

his temporary residence, (b) receipt of income or gross receipts, or (c) the temporary location of personal property, within a State, Territory, possession, political subdivision thereof, or the District of Columbia: *Provided*, That nothing contained in this section shall prevent the State, Territory, possession, political subdivision thereof, or the District of Columbia, wherein a person in the military service resided or was domiciled prior to the time when he first acquired a temporary residence, as defined herein, from imposing a tax upon the income, gross receipts, or personal property of such persons, if it otherwise has jurisdiction to impose such tax: *And provided further*, That nothing contained in this section shall prevent a State, Territory, possession, political subdivision thereof, or the District of Columbia from imposing taxes upon income or gross receipts, other than compensation for military service, derived from sources therein, nor from imposing a tax on personal property situated therein other than at a temporary location, as herein defined.

"(2) After the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942, no State, Territory, possession, political subdivision thereof, or the District of Columbia shall make claim for, collect, or receive from any person in the military service any tax made inapplicable by subsection (1) hereof and which has accrued subsequent to the declaration of the national emergency made

by the President on September 8, 1939; but the refund of taxes collected or received prior to such effective date shall not be required by the provisions of this section.

"(3) This section shall not be deemed in any manner to authorize any State, Territory, possession, political subdivision thereof, or the District of Columbia to impose any tax upon personal property located in or on any Federal area.

"(4) (a) When after September 8, 1939, a person in the military service has changed his physical residence in order to comply with military orders he shall be deemed to have acquired a 'temporary residence'; except that for purposes of taxation by a State, Territory, possession, or the District of Columbia he shall be deemed to have acquired a 'temporary residence' only if he shall have moved outside the exterior boundaries of such State, Territory, possession, or the District of Columbia.

"(b) Personal property shall be deemed to have a 'temporary location' when a person in the military service has such property at his 'temporary residence' or when, on changing from one 'temporary residence' to another, he leaves it at a previous 'temporary residence'.

"(c) The term 'Federal area' means any lands or premises owned or acquired by or for the use of the United States or any department, establishment, or agency of the United States."

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PART II

HEADQUARTERS ARMY SERVICE FORCES
Office of the Judge Advocate General
Washington 25

18 May 1944

SPJGT 1944/4613

MEMORANDUM FOR Director, Military Personnel Division, A.S.F.

Attention: Lieutenant Colonel W. D. Partlow, J.A.G.D.
Subject: Proposed Amendment to Section 514 of the Soldiers' and Sailors' Civil Relief Act by H.R. 4733.

1. By transmittal sheet dated 6 May 1944 (SPGAL/011 Gen (6 May 44) - 124), there was referred to this office a copy of H.R. 4733, a bill to amend section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940 as amended, with a request for remarks and recommendations particularly as to any changes in existing law that would be accomplished by the enactment of said bill.

2. Both section 514 as it now exists and H.R. 4733 are designed to prevent multiple taxation of military personnel serving within various taxing jurisdictions as the result of military or naval orders. As presently worded section 514 primarily affects taxes in respect of income and other taxes based on residence or domicile. Nothing in section 514 prevents the state of "temporary residence" from taxing tangible personal property actually located in such state, so long as the tax does not depend on residence or domicile. A few states, however, have taken the position that the tangible per-

sonal property of military personnel who are only temporarily within their jurisdiction does not acquire a situs for taxation. H.R. 4733 would prevent multiple taxation of such property (including motor vehicles) as well as reach essentially the same result with respect to income taxation as section 514.

3. Subsection (2) of H.R. 4733 provides that after the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942 (6 October 1942) no state shall collect taxes made inapplicable by subsection (1) and which accrued subsequent to 8 September 1939. It is provided, however, that refunds of taxes collected prior to such effective date (6 October 1942) are not required. Thus, the proposed bill does not require refunds of taxes collected prior to 6 October 1942, but nothing is provided concerning taxes collected after 6 October 1942. By implication, therefore, taxes covered by H.R. 4733 which are not covered by section 514, as now worded, would have to be refunded if collected after 6 October 1942. It is believed that this feature of H.R. 4733, being retroactive, would create some confusion and generate some opposition.

4. While H.R. 4733 achieves essentially the same result as section 514 with respect to income taxation, there is one important difference. An actual change of physical residence *after 8 September 1939* outside of the taxing jurisdiction in which a person was resident or domiciled on that date is a prerequisite under the proposed bill to the relief available. By one construction of the present section 514, however, such actual change of physical residence is not required. For example, if an Army officer domiciled in California was stationed in Maryland on 8 September 1939 and lived

there, he would have been in Maryland by reason of compliance with military orders. If he continued to live in Maryland after 8 September 1939, under section 514 he would not be considered to be domiciled in or to be a resident of Maryland for income tax purposes no matter how long he remained there under military orders and his military income would not be deemed to be earned there. Under the proposed amendment, however, since there was no change of physical residence, such officer would be considered a resident of Maryland for tax purposes if he continued to reside there at least six months as under the Maryland income tax law a person is deemed a resident if he maintains a place of abode there for at least six months. Moreover, military income received by him while still residing in Maryland would be considered to be income earned there. Therefore, under this construction of section 514, certain tax advantages are afforded military personnel which are not afforded by the proposed amendment.

5. H.R. 4733 is practically identical with the draft of a bill recommended by this office in 1942 at the time when consideration was being given to amending the Soldiers' and Sailors' Civil Relief Act of 1940. As an initial approach to the problem H.R. 4733 is perhaps preferable to section 514. That, however, is not the situation now. Section 514 was enacted 6 October 1942, and since that date has been construed and interpreted by many state officials. So far as this office is aware, the effect given to section 514 in practical operation has been generally satisfactory within the limits of the section. The scope of section 514 should be enlarged to grant relief from tax on tangible personal property, in-

cluding automobile licenses, but H.R. 4733, instead of fitting into the framework of section 514 by supplying an amendment to accomplish the desired ends, substitutes an entirely new section based upon a different approach to the problem. In the opinion of this office it would be preferable to achieve the desired result by gearing the requisite amendments to the section as presently constituted. To enact a completely new section which approaches the problem differently may upset interpretations and practical arrangements which have been set up over the past one and one half years with respect to other taxes.

6. There is attached hereto a suggested draft of an amendment to section 514, which it is believed will accomplish essentially the same result as H.R. 4733, but within the framework of the present section 514. The underscored portions of the suggested draft indicate additions to the present section 514. The changes made extend the benefits of the section to include taxes on tangible personal property, including licenses on automobiles. In the case of personal property used in or arising from a trade or business, however, it is provided that nothing contained in the section shall prevent taxation by any state or other taxing authority if it otherwise has jurisdiction. This was deemed necessary to cover the situation where a member of the armed forces is domiciled in one state, owns a business in another state, and is stationed in a third state or in the state where he has his business. Under the suggested draft the state where the person is stationed (if it is not the state of domicile or residence) would not have jurisdiction to tax personal property of such person but the suggested draft, as is true of section 514, neither

prevent the state of domicile or residence from taxing personal property of such person nor prevents a state from taxing personal property used in or arising from the conduct of a trade or business, if such state otherwise has jurisdiction to tax. The operation of the section as to the other taxes would, under the suggested draft, continue as previously.

7. Attention is directed to the fact that "personal property" is defined to include motor vehicles and that the term "taxation" is defined to include licenses imposed in respect of motor vehicles or the use thereof provided that the license "required by the State, Territory, possession or District of Columbia of which the person is a resident or in which he is domiciled has been paid." Note that this proviso omits reference to payment to a "political subdivision of any of the foregoing"; this was done advisedly as it was believed that a person in the military service should only be required to pay the *state* license in his state of domicile or residence as a prerequisite to being freed from the burden of paying automobile license taxes where he is stationed.

8. It should be noted that while the suggested draft provides, as does the present section 514, that the section is effective as of 8 September 1939, it does not require the crediting or refunding of taxes in respect of *tangible* personal property paid prior to the date of enactment of the new amendments or the crediting or refunding of any other tax paid prior to 6 October 1942. It is believed that this provision remedies the defect noted above in H.R. 4733 concerning the refunding of personal property taxes paid after 6 October 1942. In

the same connection attention is called to the fact that since the suggested draft does not prevent taxation by a state or other taxing jurisdiction of personal property used in or arising from a trade or business, if it otherwise has jurisdiction, taxes paid in respect of such property are not refundable.

For The Judge Advocate General:

(Signed) BERRYMAN GREEN
Berryman Green,
Lt. Col., J.A.G.D.,
Chief of Tax Division.

2 Incls.
Incl. 1 - Draft of proposed amendment to sec. 514, Soldiers' and Sailors' Relief Act.
Incl. 2 - T/S MPD,ASF, 6 May 44, w/incl.

BILL

~~DRAFT OF PROPOSED AMENDMENT~~ AMEND

TO SECTION 514 OF SOLDIERS' AND SAILORS' CIVIL RELIEF ACT.

Be it enacted, etc. ——— to read as follows:

" Sec. 514. (1) For the purposes of taxation in respect of any person, or of his personal property, income, or gross income, by any State, Territory, possession, or political subdivision of any of the foregoing, or by the District of Columbia, such person shall not be deemed to have lost a residence or domicile in any State, Territory, possession, or political subdivision of any of the foregoing, or in the District of Columbia, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, while, and solely by reason of being, so absent. For the purposes of taxation in respect of the personal property, income, or gross income of any such person by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, of which such person is not a resident or in which he is not domiciled, compensation for military or naval service shall not be deemed income for services performed within, or from sources within, such State, Territory, possession, political subdivision, or District, and personal property shall not be deemed to be located or present in or to have a situs for taxation in such State, Territory, possession, political subdivision, or District: Provided, That nothing contained in this section shall prevent taxation by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia in respect of personal property used in or arising from a trade or business, if it otherwise has jurisdiction. This

Incl. 1

section shall be effective as of September 8, 1939, except that it shall not require the crediting or refunding of any tax in respect of tangible personal property (including licenses, fees or excises imposed in respect of motor vehicles or the use thereof) paid prior to the date of ~~the~~ its enactment ~~of (HERE INSERT TITLE OF ACT MAKING THESE AMENDMENTS) nor the crediting or refunding of any other tax~~ paid prior to October 6, 1942.

(2) When used in this section, (a) the term "personal property" shall include tangible and intangible property (including motor vehicles), and (b) the term "taxation" shall include but not be limited to licenses, fees, or excises imposed in respect of motor vehicles or the use thereof, provided that the license, fee or excise required by the State, Territory, possession or District of Columbia of which the person is a resident or in which he is domiciled has been paid."

8

Sec. 2. Nothing contained in this Act shall be construed to require the crediting or refunding of any tax

PART III

TFE/4673
tm

SPGAL/011 Gen (3 May 44)-124.

JUN 13 1944

Honorable Andrew J. May,
Chairman, Committee on Military Affairs,
House of Representatives.

Dear Mr. May:

The War Department has no objection to the enactment of legislation to accomplish the purpose of H. R. 4733, a bill "To amend section 514 of the Soldiers' and Sailors' Relief Act".

The bill is practically identical to a proposed amendment of Article V of the Soldiers' and Sailors' Civil Relief Act of 1940 contained in section 17 of H. R. 7029, Seventy-seventh Congress, and is designed to amend section 514 of that Act, as added by section 17 of the Act of October 6, 1942 (56 Stat. 769, 777), so as to prevent multiple taxation of the personal property of military personnel by the various states.

As presently worded, section 514 of the Act primarily affects taxes in respect of income and other taxes based on residence or domicile. Nothing in that section prevents the state of "temporary residence" from taxing tangible personal property actually located in such state, so long as the tax does not depend on residence or domicile. A few states, however, have taken the position that tangible personal property of military personnel who are only temporarily within their jurisdictions does not acquire a situs for taxation.

Although the bill, H. R. 4733, is preferable to section 514 of the Act as an initial approach to the problem of the multiple taxation of military personnel present in various states in compliance with military orders, it is felt that it would be preferable at this time to achieve the desired result by gearing the required amendments into the framework of that section as presently constituted. The effect given such section has been generally satisfactory within its limits, and to enact at this time a completely new section which approaches the problem differently may upset interpretations and practical arrangements which have been set up over the past one and one-half years with respect to other taxes.

There is inclosed a draft of bill in harmony with the foregoing which the War Department recommends be substituted for the bill H. R. 4733. It is believed that such substitute draft will accomplish essentially the same result as H. R. 4733, but within the framework of existing law. It will be noted that "personal property" is defined therein to include motor vehicles and that the term "taxation" is defined to include licenses imposed in respect of motor vehicles or the use thereof provided that the license "required by the State, Territory, possession or District of Columbia of which the person is a resident or in which he is domiciled has been paid". The substitute bill would not be applicable, however, to personal property used in or arising from a trade or business, and would not require the refunding of taxes in respect of tangible personal property paid prior to the date of enactment of the bill.

The proposed legislation would not result in any additional cost to the Government.

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

(Sgd.) HENRY L. STIMSON
Secretary of War.

Incl.
Draft of Bill.

A BILL
To amend section 514 of the Soldiers' and Sailors' Civil Relief Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940 (54 Stat. 1179), as added by the Soldiers' and Sailors' Civil Relief Act Amendments of 1942 (56 Stat. 769), is hereby amended to read as follows:

"Sec. 514. (1) For the purposes of taxation in respect of any person, or of his personal property, income, or gross income, by any State, Territory, possession, or political subdivision of any of the foregoing, or by the District of Columbia, such person shall not be deemed to have lost a residence or domicile in any State, Territory, possession, or political subdivision of any of the foregoing, or in the District of Columbia, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resi-

dent of, any other State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, while, and solely by reason of being, so absent. For the purposes of taxation in respect of the personal property, income, or gross income of any such person by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, of which such person is not a resident or in which he is not domiciled, compensation for military or naval service shall not be deemed income for services performed within, or from sources within, such State, Territory, possession, political subdivision, or District, and personal property shall not be deemed to be located or present in or to have a situs for taxation in such State, Territory, possession, political subdivision, or District: *Provided*, That nothing contained in this section shall prevent taxation by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia in respect of personal property used in or arising from a trade or business, if it otherwise has jurisdiction. This section shall be effective as of September 8, 1939, except that it shall not require the crediting or refunding of any tax paid prior to October 6, 1942.

"(2) When used in this section, (a) the term 'personal property' shall include tangible and intangible property (including motor vehicles), and (b) the term 'taxation' shall include but not be limited to licenses, fees, or excises imposed in respect of motor vehicles or the use thereof, provided that the license, fee or excise required by the State, Territory, possession or District of Columbia of which the person is a resident or in which he is domiciled has been paid."

Sec. 2. Nothing contained in this Act shall be construed to require the crediting or refunding of any tax in respect of tangible personal property (including licenses, fees or excises imposed in respect of motor vehicles or the use thereof) paid prior to the date of its enactment.

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785-212—65——1

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In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 16

SGT. JESSE E. SNAPP, PETITIONER

v.

W. D. NEAL, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

OPINIONS BELOW

The Chancery Court of Copiah County, Mississippi, rendered no opinion. The opinion of the Supreme Court of Mississippi (R. 46–61) is reported at 250 Miss. 597, 164 So. 2d 752.

JURISDICTION

The judgment of the Supreme Court of Mississippi was filed on June 1, 1964 (R. 62–63). The time for filing a petition for certiorari was extended by Mr. Justice Black to September 30, 1964, and then to October 29, 1964 (R. 63, 64). The petition for a writ of certiorari was filed on October 28, 1964, and was granted on March 8, 1965 (R. 65; 380 U.S. 931). The jurisdiction of this Court rests on 28 U.S.C. 1257(3).

QUESTIONS PRESENTED

1. Whether the federally granted exemption from personal property taxes imposed on a serviceman's motor vehicle by a State in which he is stationed (50 U.S.C. App. 574) is conditioned upon compliance with the registration and licensing laws of his home State.

2. Whether a State tax imposed upon a mobile trailer used as a home by a serviceman is a tax "imposed in respect to motor vehicles or the use thereof" within the meaning of that phrase in the Soldiers' and Sailors' Civil Relief Act of 1940.

INTEREST OF THE UNITED STATES

The United States has a well-recognized interest in insuring enforcement of the protections which Congress provided for the members of the armed forces in the Soldiers' and Sailors' Civil Relief Act of 1940, as amended (50 U.S.C. App. 574). See *Dameron* v. *Brodhead*, 345 U.S. 322; *United States* v. *Arlington County, Commonwealth of Virginia*, 326 F. 2d 929, 931–932 (C.A. 4). Since the present case involves questions of broad importance to servicemen concerning the interpretation of a provision of that Act, we deem it appropriate to set forth our views on those issues.[1]

STATUTES INVOLVED

The pertinent statutes are set forth in Appendix A, *infra*, pp. 17–21.

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[1] For identical reasons, the government is also expressing its views in the companion case, *California* v. *Buzard*, No. 40. We are, however, filing only a short memorandum there, and we rely on this brief for the full statement of the views of the United States.

STATEMENT

Petitioner, a sergeant in the Air Force, is a permanent resident and domiciliary of South Carolina who is stationed in Mississippi under military orders. He purchased a house trailer in Greenville, Mississippi, on May 16, 1959. In October 1961, when he was transferred to Crystal Springs Air Force Base, the trailer was transported to his new location in Mississippi. It has not been on a Mississippi highway since that time, but has been parked at a trailer court (R. 13–14, 25). The trailer has wheels attached to it, but, when used as a home, as it has been since that date, it is supported by movable concrete blocks (R. 14). Since the trailer has never been in South Carolina, it has never been registered in that State; and petitioner has never paid the license fees required by South Carolina for trailers used within its borders (R. 13–14, 26).

Mississippi and its political subdivisions assessed an ad valorem tax on the house trailer, which was alleged to be due on November 1, 1962. Petitioner paid the assessment of $38.50 under protest (R. 14, 21), and filed an application for refund with the appropriate State officials (R. 12–15). Petitioner contended that Section 514 of the Soldiers' and Sailors Civil Relief Act of 1940 granted him an exemption from the personal property taxes of any State in which he was stationed (R. 12–17). When his application was denied, petitioner sought review in the Chancery Court of Copiah County (R. 2–3), which affirmed the action of the State Attorney General denying a refund (R. 40).

The Supreme Court of Mississippi affirmed, also holding that the tax had been properly assessed (R. 46–61). It recognized that the tax was an *ad valorem* personal property tax, and that Section 514 (50 U.S.C. App. 574) generally grants servicemen an exemption from a liability for such taxes when imposed by a State in which they are stationed. It held, however, that (R. 57–58):

> * * * Section 574 of 50 U.S.C.A. does not prohibit the levy of an ad valorem tax on motor vehicles unless the serviceman claiming the tax immunity has complied with the [motor vehicle registration] laws of the state of his domicile. This the appellant has clearly failed to do. * * *

INTRODUCTION AND SUMMARY

Sergeant Snapp is concededly a resident of South Carolina and not a resident of Mississippi, where he is stationed pursuant to military orders. Having purchased and kept his trailer in Mississippi, he was not required to, and did not, register it with, or pay license fees to, the State of South Carolina. The tax imposed on his trailer is, by the Mississippi court's own characterization, an *ad valorem* personal property tax. The principal question presented by this case is whether—even assuming Snapp's stationary trailer is a "motor vehicle" within the meaning of Section 514 of the Soldiers' and Sailors' Civil Relief Act—the Act permits a State to impose a personal property tax on a motor vehicle of a serviceman stationed within its borders.

One of the primary purposes of the statute is to define the residence of a serviceman and the situs of

his personal property in such a way as to preclude personal property taxation by any State in which the serviceman is present solely by reason of compliance with military orders. Mississippi contends, however, that this basic purpose of Section 514 is limited, as to motor vehicles, by Section 514(2)(b). This subsection specifies that the prohibition on taxation of income, personal property, or the use of personal property "shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles or the use thereof: *Provided,* That the license, fee, or excise required by the State * * * of which the [serviceman] is a resident * * * has been paid." Mississippi construes the proviso as making the exemption from personal property taxes on motor vehicles conditional on the payment of license fees to the domiciliary State, and contends that since Sergeant Snapp did not make such payments to South Carolina, any motor vehicle owned by him was subject to *ad valorem* taxation by the State of Mississippi.

Unfortunately, there is no legislative history of Section 514(2)(b). Nevertheless, the wording and purpose of the statute make plain that Section 514(2)(b) has nothing whatsoever to do with *ad valorem* personal property taxes. It is solely intended to guarantee that a serviceman who registers his vehicle with—and pays the accompanying license fees to—his State of domicile, does not also have to do so to the State in which he is stationed. This is accomplished by extending the exemption from taxation by the State in which he is stationed to "include * * * licenses * * * imposed in respect to motor

vehicles" but by making this extension of immunity subject to the condition that "the license * * * required by the State * * * of which the [serviceman] is a resident * * * has been paid." The failure to pay motor vehicle license fees to the State of residence makes a serviceman subject to the licensing requirements of the State where he is stationed. But it in no way affects his exemption from personal property taxation by that State.

ARGUMENT

I. ONE BASIC PURPOSE OF SECTION 514, AS AMENDED IN 1944, IS TO FORBID THE TAXATION OF A SERVICEMAN'S PERSONAL PROPERTY BY A STATE IN WHICH HE IS STATIONED

The basic purpose of Section 514 of the Soldiers' and Sailors' Civil Relief Act is clear from its wording and structure. It defines the residence of servicemen, the source of their income, and the situs of their property for the purpose of exempting them from certain forms of taxation by the States in which they are stationed. Section 514(1) first provides that a serviceman "shall not be deemed to have lost a residence or domicile in any State * * * solely by reason of being absent therefrom in compliance with military * * * orders" and that he shall not be deemed "to have acquired a residence or domicile in * * * any other State * * * solely by reason of being, so absent." Section 514(1) then goes on to spell out the consequences of this statutory definition of a serviceman's residence. For the purposes of State income taxation, "compensation for military * * *

services shall not be deemed income * * * from sources within" any State "of which such person is not a resident." For the purposes of taxation "with respect to personal property, or the use thereof," personal property "shall not be deemed * * * to have a situs for taxation" in any such State.

In short, Section 514(1) eliminates the jurisdictional grounds that otherwise would support taxation of a serviceman's income or personal property by a State to which he has moved solely pursuant to military orders. As to taxation "with respect to personal property, or the use thereof," the all-inclusive scope of the statute is specified by Section 514(2)(a), which makes clear that "the term 'personal property' shall include tangible and intangible property (including motor vehicles)." Thus, if the statute went no further, it would be clear that the State of Mississippi lacks power to impose an *ad valorem* personal property tax upon the value of a trailer owned by a serviceman stationed in that State, for Section 514(1) provides specifically that such "personal property shall not be deemed * * * to have a situs for taxation in such state." Indeed, as the committee reports make clear, the prevention of such taxation was the very purpose of the 1944 amendments to the Act.[2] H. Rep. No. 1514, 78th Cong.,

[2] As originally enacted, the Soldiers' and Sailors' Civil Relief Act of 1940, c. 888, 54 Stat. 1178, contained no cognate of Section 514. That section was added by Section 17 of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942, c. 581, 56 Stat. 769, 777. However, the 1942 Act added only the rules that no residence or domicile was to be gained or lost due to military service and that compensation for military

2d Sess., pp. 1-2, and S. Rep. No. 959, 78th Cong., 2d Sess., pp. 1-5 (Appendix B, *infra*, pp. 22-25).

II. SECTION 514(2)(b) DOES NOT MAKE THE PAYMENT OF LICENSE FEES TO THE SERVICEMAN'S HOME STATE A CONDITION OF EXEMPTION FROM A PROPERTY TAX IMPOSED ON HIS MOTOR VEHICLE BY ANOTHER STATE

Mississippi has recognized that the statute is intended to furnish an exemption from taxation of a serviceman's personal property by a State in which he is stationed. It held, however, that, as applied to motor vehicles, this exemption is conditioned on the serviceman's prior payment of the license fees required by the State of which he is a resident (R. 57-58). We submit that the holding is inconsistent with both the wording and the obvious purpose of Section 514(2)(b).

A. THE LANGUAGE OF SECTION 514(2)(b) IS INCONSISTENT WITH THE HOLDING BELOW

Nothing in the language of Section 514(2) supports the decision below. That section provides that:

> (2) When used in this section, (a) the term "personal property" shall include tangible and

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service would not constitute income earned within the State in which the non-resident serviceman was stationed. Subsequent to the enactment of the 1942 Act, questions were raised regarding the effect of Section 514 with respect to personal property taxes and proposed legislation was submitted in 1944 to clarify the matter. H.R. No. 4733, 78th Cong., 2d Sess. (Appendix B, *infra*, pp. 25-27). The bill was rewritten in committee and ultimately enacted into law (Act of July 3, 1944, c. 397, 58 Stat. 722), adding to Section 514 the rule that personal property was not to be deemed to have a situs for taxation in the State in which a non-resident serviceman was stationed.

intangible property (including motor vehicles), and (b) the term "taxation" shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles, or the use thereof: *Provided,* That the license, fee, or excise required by the State, Territory, possession, or District of Columbia of which the person is a resident or in which he is domiciled has been paid.

As the Mississippi court apparently recognized, the definition of "personal property" in subsection (a) is not limited by the proviso to the section. This definition, including the parenthetical reference to motor vehicles, clarifies without extending the coverage of Section 514(1). It was taken from an earlier bill which contained the specific reference to motor vehicles but which made no attempt to grant immunity from, or otherwise deal with, licensing requirements for motor vehicles in the various States. H.R. 4733, 78th Cong., 2d Sess.; Appendix B, *infra,* p. 25.

The proviso is plainly a limitation on the effect of subsection (b), which extends the scope of the exemption granted by Section 514(1). By its terms, Section 514(1) deals unmistakably and explicitly with "taxation in respect of * * * personal property, income, or gross income." This alone would prohibit a personal property tax on the value of a motor vehicle. Section 514(1) does not, however, grant an exemption from privilege taxes imposed for the use of a State's highway system—the form which motor vehicle licensing requirements have traditionally and generally taken. See *infra,* p. 11. Such an exemption was

added in 1944 by Section 514(2)(b), which states that "the term 'taxation' shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles or the use thereof." The proviso that immediately follows this clause granting a new exemption was obviously intended to condition and limit the new exemption, and nothing else. Repeating the very words of the new grant of exemption from "licenses, fees, or excises" on motor vehicles, the proviso conditions the grant on a showing that "the license, fee, or excise required by the State * * *of which the person is a resident * * * has been paid."

In short, the language and structure of Section 514(2) shows that the proviso is only a condition of the exemption from State motor-vehicle license fees granted by subsection (b). If the proviso is not satisfied, there is no exemption from license fees. Because the proviso is not a condition of the exemption from personal property and income taxes granted by Section 514(1), a failure to satisfy the proviso has no effect on these exemptions.

B. THE PURPOSE OF SECTION 514(2)(b) FURNISHES NO SUPPORT FOR THE HOLDING BELOW

Section 514(2)(b) serves two purposes. First, by extending the exemption from taxation by a State to which a serviceman is assigned to include motor-vehicle license fees, it prevents the States from subjecting servicemen to the burden of multiple licensing fees simply because of movements required by military orders. Congress accomplished this purpose with regard to ordinary personal property taxation by saving "the sole right of taxation to the state of original

residence." *Dameron* v. *Brodhead*, 345 U.S. 322, 326. But this policy could not safely be applied to motor-vehicle licensing without the addition of the further condition found in the proviso.

The States in which a serviceman operates his motor vehicle have a close interest in it, arising from the maintenance and regulation of the highways which he uses. The States have required the registration of motor vehicles and payment of privilege taxes since before 1920. *Tax Overlapping in the United States, 1964*, Advisory Commission on Intergovernmental Relations (U.S. Govt. Printing Office, 1964), pp. 21, 24. In 1944, when Congress amended Section 514 to deal with motor-vehicle licenses, fees, and excises, all States had statutes requiring the registration of motor vehicles, payment of license fees, and display of license plates. See Appendix C, *infra*, pp. 28–30.

If Congress had simply forbidden the State where a serviceman was stationed from imposing a license fee with respect to the motor vehicle or its use (*i.e.*, if Congress had not added the proviso to Section 514(2)(b)), the immediate result would have been that a serviceman stationed in a State other than his home State would probably not have had to comply with the licensing requirements of any State. Section 514 would exempt him from the requirements of the State in which he was stationed; and, since he was not using the highways of his home State, that State would not require him to register his vehicle and pay privilege taxes. He would have little incentive to register voluntarily and pay taxes. Moreover,

since the payment of highway privilege taxes is a universal prerequisite to the registration of motor vehicles and the issuance of license plates, the State in which he was stationed might well have unlicensed vehicles using its highways with all of the accompanying problems of identification for theft and accident purposes.

By providing in Section 514(2) an exemption to a non-resident serviceman from the motor vehicle licenses, fees, and excises of the State in which he is operating his vehicle conditioned upon his payment of the motor vehicle privilege taxes of his home State, Congress insured that a serviceman stationed away from his home State would pay motor vehicle privilege taxes either to his home State or to the State in which he was on military duty. No vehicles belonging to servicemen stationed away from their State of domicile would be using the highways without license plates.

In short, Section 514(2)(b) was intended to deal with the problem of motor vehicle licenses in all its facets. First, the possibility that a motor vehicle privilege tax might not be considered a tax on the serviceman's personal property (and thus that, despite Section 514(1), the serviceman might be subjected to multiple license fees simply because of his military orders) was foreclosed by defining the prohibited taxation of personal property, to "include * * * licenses, fees, or excises imposed in respect to motor vehicles or the use thereof." Then, to protect the legitimate State interest in licensing requirements for motor vehicles, Congress provided that the exemp-

tion should apply only if "the license, fee, or excise required by the State * * * of which the [serviceman] is a resident * * * has been paid." However, nothing in these problems or their solution involves treating a serviceman's motor vehicle differently from any of his other personal property for purposes of an *ad valorem* tax imposed by the State in which the serviceman is stationed. The policy adopted in Section 514(1)—that he need only pay the personal property taxes, if any, of his home State—remains inviolate. It is unaffected by the limited statutory authorization of motor-vehicle privilege taxes, enacted in recognition of the interest of States in maintaining and policing their highways.[8]

* * * * *

Thus, both the language and the purposes of Secton 514 demonstrate that the Section unconditionally bars a State from applying its personal property tax to the property of a serviceman stationed within its borders. Since, as the Mississippi Supreme Court held, the tax in issue in this case is an *ad valorem* personal property tax, Section 514 bars Mississippi from imposing it on petitioner's trailer.

---

[8] It is hardly necessary to add that the construction given the proviso by the court below makes no sense as a matter of policy. A failure to pay the license tax required by South Carolina would subject Sergeant Snapp to the Mississippi tax on his personal property, while failure to pay South Carolina's personal property tax on motor vehicles would have no such effect.

III. THE MISSISSIPPI TAX IS ALSO INVALID BECAUSE IT IS NOT AN EXCISE "IMPOSED IN RESPECT TO MOTOR VEHICLES, OR THE USE THEREOF" WITHIN THE MEANING OF THAT PHRASE IN SECTION 514(2)(b)

Section 514(1) grants petitioner an exemption from any tax "with respect to personal property, *or the use thereof*" (emphasis added). The only exception to this general prohibition of a State tax on Snapp's use of his own personal property is that found in Section 514(2)(b), which allows a State to impose a license or excise tax "in respect to motor vehicles or the use thereof" if no such tax has previously been paid to the home State, here South Carolina. It is thus clear that even if Mississippi had imposed a privilege tax, rather than an *ad valorem* tax, the tax would be permissible only if it were on the use of a "motor vehicle" as that term is used in the federal statute.

Whether an immobilized house trailer is a "motor vehicle" cannot be answered by simply looking to familiar definitions of that term. Such definitions regularly are framed in terms of use to transport people or goods, but they do not make clear whether it is sufficient that the object is capable of such use, or whether it is also necessary that the object actually is used for these purposes. The meaning of the statutory phrase, as applied to an immobilized house trailer must, then, be found in the purposes of Section 514(2)(b).

As we have shown above, the necessity for adding a specific reference to motor-vehicle licensing statutes arose both from the fact that such statutes are almost uniformly written as taxes on the privilege of using

public highways (rather than the serviceman's personal property)[4] and from the additional fact that the practicalities of regulation of public roads required that any exemption from a licensing requirement would have to be conditional on the serviceman's actually having obtained a license from his home State. In light of these purposes, it is evident that Congress had reference to the familiar State taxes on the privilege of using public roads when, in Section 514(2)(b), it conditionally authorized a State in which a serviceman was stationed to require the payment of license fees "in respect of motor vehicles."

The purposes of Congress in enacting Section 514 would in no way be served by construing subsection 2(b) as authorizing a tax on a wholly immobile trailer such as Sergeant Snapp's. Congress had no intention of distinguishing between a tax on the use of any other form of property and a tax described in subsection 2(b) except insofar as the latter laws protect the States' interest in charging for, and regulating the use of, their roads. The conditional grant of permission for a State in which a serviceman is stationed to impose a license fee for the use of "motor vehicles"

[4] In 1944, when Congress amended Section 514 to deal with motor vehicle licenses, only six States (Arkansas, Georgia, Illinois, Nebraska, Oklahoma, and Wyoming), together with Alaska, had a licensing requirement that was not dependent upon use of the highways, and three of those States (Arkansas, Illinois, and Oklahoma) and Alaska based their requirement upon use of the vehicle. See Appendix C, pars. 3 and 4, *infra*, p. 30. The other 42 States, as well as Hawaii and the District of Columbia, imposed taxes on the privilege of using the public roads. See Appendix C, pars, 1 and 2, *infra*, pp. 28–29.

was solely intended to recognize the legitimate concern of the States in regulating and maintaining their highways. In light of this purpose, Congress could not have intended a distinction between a tax on the use of an immobile trailer and a tax on the use of any other property which did not affect public roads. Thus, if the statutory authorization of a privilege tax "in respect to motor vehicles" is read in light of the statute's purpose, it does not permit a tax on an immobile trailer such as that involved in this case.

CONCLUSION

For the reasons stated above, the judgment of the Supreme Court of Mississippi should be reversed.

Respectfully submitted.

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AUGUST 1965.

APPENDIX A

Soldiers' and Sailors' Civil Relief Act of 1940, c. 888, 54 Stat. 1178:

SEC. 514 [as added by Sec. 17, Soldiers' and Sailors' Civil Relief Act Amendments of 1942, c. 581, 56 Stat. 769; and as amended by Sec. 1, Act of July 3, 1944, c. 397, 58 Stat. 722; and Act of October 9, 1962, P.L. 87-771, 76 Stat. 768].[1]

(1) For the purposes of taxation in respect of any person, or of his *personal* property, income, or gross income, by any State, Territory, possession, or political subdivision of any of the foregoing, or by the District of Columbia, such person shall not be deemed to have lost a residence or domicile in any State, Territory, possession, or political subdivision of any of the foregoing, or in the District of Columbia, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, while, and solely by reason of being, so absent. For the purposes of taxation in respect of the *personal property,* income, or gross income of any such persons by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Colum-

[1] For the convenience of the Court, we have italicized the provisions of Section 514 which were added to it by the 1944 Act. In other words, the unitalicized portions constitute Section 514 as it was enacted in 1942 and as it stood prior to the amendments made by the 1944 Act with the caveat that the unitalicized portions in brackets were added in 1962.

bia, of which such person is not a resident or in which he is not domiciled, compensation for military or naval service shall not be deemed income for services performed within, or from sources within, such State, Territory, possession, political subdivision, or District, and *personal property shall not be deemed to be located or present in or to have a situs for taxation in such State, Territory, possession, or political subdivision, or district.* [Where the owner of personal property is absent from his residence or domicile solely by reason of compliance with military or naval orders, this section applies with respect to personal property, or the use thereof, within any tax jurisdiction other than such place of residence or domicile, regardless of where the owner may be serving in compliance with such orders:] *Provided, That nothing contained in this section shall prevent taxation by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia in respect of personal property used in or arising from a trade or business, if it otherwise has jurisdiction.* This section shall be effective as of September 8, 1939, except that it shall not require the crediting or refunding of any tax paid prior to *October 6, 1942.*

(2) *When used in this section, (a) the term 'personal property' shall include tangible and intangible property (including motor vehicles), and (b) the term 'taxation' shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles or the use thereof: Provided, That the license, fee, or excise required by the State, Territory, possession, or District of Columbia of which the person is a resident or in which he is domiciled has been paid.*

(50 U.S.C. App. 574.)

7A Mississippi Code, 1942, Annotated (Recompiled 1952):

§ 9883. *Ad valorem tax—municipal general levy.*

Municipalities may levy taxes in an amount not exceeding fifteen (15) mils on the dollar of the assessed valuation of all taxable property within such municipality for general revenue purposes and for general improvements. Provided, however, the governing authorities of any municipality may make additional levies for special purposes as authorized by law, provided the aggregate of all such special levies does not exceed the limitation prescribed therefor by law.

* * * * *

7A Mississippi Code, Annotated (Recompiled 1952, 1964 Cum. Supp.):

§ 9877. *State ad valorem tax levy.*

A state ad valorem tax of four (4) mills on the dollar for the year 1958 and for each year thereafter is hereby levied on all taxable property in the State of Mississippi.

* * * * *

§ 9879. *Ad valorem taxes—general county levy.*

The board of supervisors of any county is hereby empowered to levy ad valorem taxes on taxable property in the respective counties in any one (1) year, as shown by the assessment roll containing assessments of property made as of January first of the year, and the assessment of motor vehicles as made according to the provisions of the "Motor Vehicle Ad Valorem Tax Act of 1958" (Sections 10007-01 et seq., Mississippi Code of 1942, Recompiled), for all general county purposes, exclusive only of levies for roads and bridges and schools, at the rate herein specified, but not in excess of the following amounts or rates:

* * * * *

§ 10007–51. *Purpose of Act.*

The purpose of this act is, with reference to assessing and collecting ad valorem taxes on house trailers, to (a) fix the taxable year, (b) fix the lien date, (c) determine the method of assessing, (d) fix the dates for assessing such taxes, (e) prescribe the method of collecting such taxes, and (f) to fix the dates for collecting such taxes.

§ 10007–52. *Definitions.*

The subject words and terms of this section, for the purposes of this act, shall have meanings as follows:

(a) The term "house trailer" shall mean and include any trailer-type vehicle or mobile home, designed and constructed so as to be suitable for use for domestic, commercial, or industrial purposes, and which is constructed so that it may be moved from place to place over the highways and streets by being supported by two (2) or more wheels, and drawn or moved by motive power not its own, and which house trailer is not taxed under authority of chapter 588, laws of 1958 [§§ 10007–01 et seq.].

(b) The term "person" shall mean any natural person, agency, firm, copartnership, corporation, joint stock, or other association or organization.

§ 10007–53. *Registration of fee—report and payment—proration of tax.*

Any person owning, occupying, using, or having in his possession or control a house trailer shall, not later than the last day of November each year, register such house trailer with the sheriff of the county in which it is located on such date. At the time such registration is made, and before a registration certificate and label may be issued, the said owner, occupant, user, possessor, or controller of said house trailer shall pay a registration fee of two dollars and fifty cents ($2.50) together with all ad

valorem taxes due on said house trailer for the then fiscal year. Fifty cents (50¢) of this fee shall be retained by the sheriff, one dollar ($1.00) shall be paid into the general county fund, and one dollar ($1.00) of this fee shall be forwarded to the tax commission to cover cost of labels, tax receipt forms, etc., as hereinafter provided.

APPENDIX B

I. Committee Reports pertaining to the 1942 amendment adding Section 514 to the Soldiers' and Sailors' Civil Relief Act of 1940:

H. Rep. No. 2198, 77th Cong. 2d Sess., p. 6:

* * * * *

SECTION 17

Section 17 is designed to prevent multiple State taxation of the property and income of military personnel serving within various taxing jurisdictions through no choice of their own. Under present State laws the personal property and income of such persons may become liable for taxes in several States within the same calendar year.

The section is retroactive as to collection of such taxes to September 8, 1939, the date of the President's declaration of a limited emergency. Since that date military personnel have been transferred from place to place often [*sic*] than in normal times.

* * * * *

S. Rep. No. 1558, 77th Cong., 2d Sess., p. 11, contains identical language.

II. Committee Reports pertaining to the 1944 amendment to Section 514 of the Soldiers' and Sailors' Act of 1940:

H. Rep. No. 1514, 78th Cong., 2d Sess., pp. 1–2:

The Committee on Military Affairs, to whom was referred the bill (H. R. 4733) to amend section 514 of the Soldiers' and Sailors' Relief Act, having considered the same, submit the

following report thereon, with the recommendation that it do pass with the following amendment:

Strike out all after the enacting clause and insert the following language:

[Here follows Sec. 514, as amended by the Act of July 3, 1944, *supra.*]

GENERAL COMMENT

When the Soldiers' and Sailors' Civil Relief Act of 1940 was amended by the act of October 6, 1942, a provision was written into the act to relieve persons in the service from liability of double taxation by being moved from one State to another under orders. It was intended that this should apply to personal property taxes as well as income taxes. However, it has been held that under the wording of such amendment personal property taxes were not included. The result has been that servicemen find themselves at times subjected to personal property taxes in more than one State by reason of being moved under orders.

The purpose of the present act is to correct this situation and to give to the servicemen the same protection as to personal property taxes that they now have as to income taxes.

S. Rep. No. 959, 78th Cong., 2d Sess., pp. 1–5:

The Committee on Military Affairs, to whom was referred the bill, H. R. 4733, to amend section 514 of the Soldiers' and Sailors' Civil Relief Act, having considered the same, submit the following report thereon, with the recommendation that it do pass.

The purpose of the proposed legislation is to clarify the intent of section 514 of the Soldiers' and Sailors' Civil Relief Act as added by section 17 of the act of October 6, 1942 (56 Stat. 769, 777). When that provision of law was added to the act to relieve persons in service from liability of double taxation by being

moved from one State to another under orders, it was intended that it should apply to personal-property taxes as well as to income taxes. As presently constituted, it primarily affects taxes in respect to income and other taxes based on residence or domicile, but it does not prevent the State of "temporary residence" from taxing tangible personal property actually located in such State so long as the tax does not depend on residence or domicile. A few States have taken the position that tangible personal property of military personnel who are only temporarily within their jurisdiction does not acquire a situs for taxation, but it has been held that section 514 of the act as now written does not affect the right of a State to assess personal-property taxes on property within its jurisdiction. The result has been that servicemen find themselves at times subjected to personal-property taxes on the same property in more than one State during the same calendar year by reason of being moved under orders.

Your committee considers that the existing law pertaining to State taxation of the personal property of persons in military service present in the various States in compliance with military orders should be clarified; that the military personnel concerned should not be subjected to multiple taxation of personal property by the various States and should be given the same protection as to personal property taxes as is now provided in respect of income taxes.

Letter of the War Department follows:

WAR DEPARTMENT,
Washington, June 9, 1944.

Hon. ROBERT R. REYNOLDS,
Chairman, Committee on Military Affairs, United States Senate.

DEAR SENATOR REYNOLDS: The War Department has no objection to the enactment of H.R. 4733, Seventy-eighth Congress, an act

to amend section 514 of the Soldiers' and Sailors' Relief Act.

The purpose of the proposed legislation is to prevent the multiple taxation of the personal property of military personnel by the various States, which it is understood was one of the purposes of section 514 of the Soldiers' and Sailors' Civil Relief Act as added by the act of October 6, 1942 (56 Stat. 769, 777).

As presently worded, section 514 of the act primarily affects taxes in respect of income and other taxes based on residence or domicile. Nothing in that section prevents the State of "temporary residence" from taxing tangible personal property actually located in such State, so long as the tax does not depend on residence or domicile. A few States, however, have taken the position that tangible personal property of military personnel who are only temporarily within their jurisdictions does not acquire a situs for taxation.

The proposed legislation will not result in any additional cost to the Government.

The Bureau of the Budget advised with respect to a similar report on H.R. 4733 to the Committee on Military Affairs, House of Representatives, that there was no objection to its submission to the Congress.

Sincerely yours,

HENRY L. STIMSON,
Secretary of War.

The report of the House Military Affairs Committee (Rept. No. 1514) is appended hereto and made a part of this report.

* * * * * *

H.R. 4733, 78th Congress, 2d Session, as referred by the House Committee on Military Affairs, would have amended Section 514 to read as follows (H. Rep. No. 1514, 78th Cong., 2d Sess., pp. 2–3):

SEC. 514. (1) The income, gross receipts, and personal property, tangible or intangible (in-

cluding automotive vehicles), of any person in the military service shall not be subject to taxation by any State, Territory, possession, political subdivision thereof, or the District of Columbia, by reason of (a) his temporary residence, (b) receipt of income or gross receipts, or (c) the temporary location of personal property, within a State, Territory, possession, political subdivision thereof, or the District of Columbia: *Provided,* That nothing contained in this section shall prevent the State, Territory, possession, political subdivision thereof, or the District of Columbia, wherein a person in the military service resided or was domiciled prior to the time when he first acquired a temporary residence, as defined herein, from imposing a tax upon the income, gross receipts, or personal property of such persons, if it otherwise has jurisdiction to impose such tax: *And provided further,* That nothing contained in this section shall prevent a State, Territory, possession, political subdivision thereof, or the District of Columbia from imposing taxes upon income or gross receipts, other than compensation for military service, derived from sources therein, nor from imposing a tax on personal property situated therein other than at a temporary location, as herein defined.

(2) After the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942, no State, Territory, possession, political subdivision thereof, or the District of Columbia shall make claim for, collect, or receive from any person in the military service any tax made inapplicable by subsection (1) hereof and which has accrued subsequent to the declaration of the national emergency made by the President on September 8, 1939; but the refund of taxes collected or received prior to such effective date shall not be required by the provisions of this section.

(3) This section shall not be deemed in any manner to authorize any State, Territory, possession, political subdivision thereof, or the District of Columbia to impose any tax upon personal property located in or on any Federal area.

(4) (a) When after September 8, 1939, a person in the military service has changed his physical residence in order to comply with military orders he shall be deemed to have acquired a "temporary residence"; except that for purposes of taxation by a State, Territory, possession, or the District of Columbia he shall be deemed to have acquired a "temporary residence" only if he shall have moved outside the exterior boundaries of such State, Territory, possession, or the District of Columbia.

(b) Personal property shall be deemed to have a "temporary location" when a person in the military service has such property at his "temporary residence" or when, on changing from one "temporary residence" to another, he leaves it at a previous "temporary residence".

(c) The term "Federal area" means any lands or premises owned or acquired by or for the use of the United States or any department, establishment, or agency of the United States.

APPENDIX C

1. State statutes requiring the registration of motor vehicles used on the highways "of this State" or "in this State":

Code of Alabama (1940), Title 36, Secs. 75 and 75(1) and Title 51, Sec. 693; 5 Arizona Code (1939), Secs. 66–204, 66–208 and 66–256; 2 Colorado Statutes Annotated (1935), c. 16, Secs. 106, 110, 111 and 121; Revised Code of Delaware (1935), Secs. 5545(a), 5550 and 5564; 1 Florida Statutes (1941), Secs. 320.02, 320.03 and 320.08; 3 Idaho Code (1932), Secs. 48–107 (a) and 48–113, *id.* (1940 Supp.), Sec. 48–127; 8 Burns Indiana Statutes (1933) (1940 Repl. Vol.), Secs. 47–102, 47–104 and 47–110; General Statutes of Kansas (1935), Secs. 8–127, 8–132 and 8–143; 4 General Statutes of Louisiana (1939), Secs. 5160, 5164 and 5179; Compiled Laws of Michigan (1929) (1945 Supp.), Secs. 4633, 4635 and 4638; 1 Minnesota Statutes (1941), Secs. 168.06, 168.09 and 168.12; 7 Mississippi Code (1942), Secs. 9354, 9358 and 9359; 18 Missouri Revised Statutes Annotated (1942), Secs. 8369 and 8377; 1 Revised Code of Montanta (1935) (1939 Supp.), Secs. 1759, 1759.5 and 1760; 1 Revised Laws of New Hampshire (1942), c. 116, Secs. 7 and 9, and c. 118, Sec. 1; 2 Revised Statutes of New Jersey (1937), Sec. 39:3–8, *id.* (1944 Cum. Supp.), Secs. 39:3–4 and 39:3–33; 5 New Mexico Statutes (1941), Secs. 68–202, 68–212 and 68–226; 2 Thompson's Laws of New York (1939), Vehicle & Traffic Law, Sec. 11; North Carolina Code (1939), Secs. 2621(200) and 2621(237); 4 North Dakota Revised Code (1943), Secs. 39–0403, 39–0411 and 39–0422; 4A Page's Ohio

General Code (1945 Repl. Vol.), Secs. 6291, 6292, 6294 and 6298; 8 Oregon Compiled Laws Annotated (1940) (1943 Pocket Part), Secs. 115–102, 115–105 and 115–110; Purdon's Pennsylvania Statutes (1936), Title 75, Secs. 91 and 271; 3 Code of Laws of South Carolina (1942), Sec. 5893; 3 South Dakota Code (1939), Secs. 44.0102, 44.0104 and 44.0107; 2 Williams Tennessee Code (1934) (1943 Repl. Vol.), Secs. 1152.3, 1152.4 and 1152.10; Vernon's Texas Statutes (1936), Arts. 6675a–4 and 6675a–5, *id.* (1942 Supp.), Art. 6675a–2, *id.* (1943 Supp.), Art. 6675a–13; Virginia Code (1942), Secs. 2154(59), 2154(67) and 2154(82); 7A Remington's Revised Statutes of Washington (1937 Repl. Vol.), Secs. 6312–15 and 6312–16; and 1 West Virginia Code (1943), Secs. 1487, 1488 and 1495. See also 2 District of Columbia Code (1940), Secs. 40–102—40–104.

2. State statutes requiring the registration of motor vehicles using "a highway" or "any highway":

Derring's California Codes (1948), Vehicle Code, Secs. 140, 141, 156, 370 and 371.5; 1 General Statutes of Connecticut (1930), Secs. 1558, 1565 and 1578, as amended; Code of Iowa (1939), Secs. 5001.01, 5001.18, and 5008.01; Kentucky Revised Statutes (1944), Secs. 186.020, 186.040 and 186.050; 1 Revised Code of Maine (1944), c. 19, Secs. 13, 15 and 17; Annotated Code of Maryland (1939) (1943 Supp.), Art. 66 1/2, Secs. 21(a), 28 and 74; 1 General Laws of Massachusetts (1932), c. 90, Secs. 2, 6, 9 and 33; 2 Nevada Compiled Laws (1929), Secs. 4376, 4378 and 4383; Rhode Island Laws (1938), c. 86, Secs, 2 and 8; 3 Utah Code (1943), Secs. 57–3a–19, 57–3a–43 and 57–3a–133; Public Laws of Vermont (1933), Secs. 5018, 5021, and 5047; and Wisconsin Statutes (1943), Sec. 85.01(1), (4) and (6). See also Revised Statutes of Hawaii (1935), Secs. 2157 and 2665.

3. State statutes requiring the registration of every motor vehicle "driven" or "operated in this State":

1 Digest of the Laws of Arkansas (1937), Secs. 6605, 6610 and 6615; 15 Jones Illinois Statutes Annotated (1934), Secs. 85.008 and 85.105; Oklahoma Statutes (1941), Title 47, Secs. 22.3–22.5. See also Compiled Laws of Alaska (1933), Secs. 3151, 3153 and 3158.

4. State statutes requiring "every owner of a motor vehicle" to register it:

Georgia Code (1933), Secs. 68–201, 68–211 and 68–214; Compiled Laws of Nebraska (1929) (1941 Cum. Supp.), Secs. 60–302, 60–307 and 60–330; and 4 Wyoming Compiled Statutes (1945), Secs. 60–104, 60–106 and 60–117.

U.S. GOVERNMENT PRINTING OFFICE: 1948

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No. 16

SGT. JESSE E. SNAPP,
Petitioner,

VS.

W. D. NEAL ET AL.,
Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI

BRIEF FOR RESPONDENTS W. D. NEAL, FORMER STATE AUDITOR, AND JOE T. PATTERSON, ATTORNEY GENERAL

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CITATION OF OPINION BELOW

The opinion of the Supreme Court of Mississippi is reported in *250 Miss. 579, 164 So.2d 752,* and is set forth in the record at pages 46-61.

STATUTES INVOLVED

Chapter 588, General Laws of Mississippi of 1958, §§*10007-01, et seq.*, Miss. Code of 1942, Recp., is involved in this case in addition to the Federal statute; South Carolina statutes and other statutes of Mississippi cited by Petitioner, and that statute is set forth as Appendix "A" hereto.

The Petitioner does not state the questions presented as they are shown by the statutes and case involved herein.

QUESTIONS PRESENTED

1. Did the Supreme Court of Mississippi commit reversible error by holding that: Petitioner was not solely by reason of his being a member of the armed forces of the United States immuned from paying a license, fee, or excise and registering his motor vehicle (house trailer) under the laws of any state, and that he must comply with the Act of Congress granting the immunity in order to claim the benefits of the Federal statute?

2. Did the Supreme Court of Mississippi commit reversible error by holding that Petitioner cannot continue to enjoy the privileges of a Federal statute when he: (1) fails to comply with the provisions thereof by registering his motor vehicle (house trailer) in the state of his domicile; and (2) elects to fail and refuse to register the motor vehicle (house trailer) in the state where he and the motor vehicle (house trailer) are physically located under state statutes specifically recognizing the Federal statute and granting to him an ad valorem tax exemption?

STATEMENT OF THE CASE

1. Facts

The facts recited by Petitioner are basically the same as found by the Court below (R. 47-48). However, Petitioner's statement concerning non-movement of the trailer on the highways on any date pertinent to this case is not supported by the record. The tax receipt shows clearly that the tax was paid until November 1, 1963 (R. 23), the trailer was capable of being so moved (R. 14) and speculation as to whether it did or did not use the highways as it had previously done is unwarranted.

An additional fact not noted in the brief for Petitioner, but sworn to by him (R. 16), is "The Trailer is a 'house trailer' as defined by Section 2(a) of said House Bill No. 747 and is not and never has been registered or taxed under authority of Chapter 588, Laws of 1958 of Mississisippi." (R. 13).

2. Proceedings Below

The outline by Petitioner of the proceedings below is substantially correct.

ARGUMENT

Respondents adopt the sound reasoning and authorities contained in the opinion below as their own. In addition thereto, the following argument is made to show that by application of the rules of this Court the opinion below should be affirmed here.

POINT I

The Tax in Question Is a Valid Exercise of Sovereignty Unless the Act of Congress Prevents the Collection of the Tax under the Facts and Circumstances of This Case.

The property in question was physically located within the territorial jurisdiction of Mississippi during the taxing period (R. 13). In *Graves* v. *Schmidlapp,* 315 U.S. 657, this Court upheld the right of New York to tax intangibles found within that state. At page 660 this Court held that: "The power to tax 'is an incident of sovereignty and is coextensive with that to which it is an incident. All subjects over which the sovereign power of a State extends are objects of taxation.' *M'Culloch* v. *Maryland,* 4 Wheat. (U.S.) 316, 429, 4 L. ed. 579, 607."

Beyond question the rule quoted above would apply to the tangible property in this case unless Mississippi has been deprived of the right to tax by operation of the Act of Congress.

The power and right to tax is always presumed, and an exemption must be clearly granted. *Phoenix F & M Ins. Co.* v. *Tennessee,* 161 U.S. 174, 178. The taxing power is essential to the existence of government, and exemption from taxation must clearly appear. *Wilmington and W. R. Co.* v. *Alsbrook,* 146 U.S. 279, 294. Grants of immunity from taxation are never to be presumed; instead all the presumptions are the other way unless an exemption is clearly established, all property must bear its just share of the burdens of taxation. *Wiggins Ferry Company* v. *E. St. Louis,* 107 U.S. 365, 371.

It is contended for Petitioner that *Section 514* of the *Soldiers' and Sailors' Civil Relief Act, 50 U.S.C. App. 574,* grants absolute immunity from ad valorem taxation of

property belonging to members of the armed forces when the property is physically located in a state other than that of the domicile of the serviceman.

Insofar as personal property other than motor vehicles is concerned, Respondents cannot disagree with Petitioner because of the views expressed by the Court in *Dameron* v. *Brodhead*, 345 U.S. 322.

Insofar as motor vehicles are concerned, Respondents cannot agree with Petitioner that the Act grants absolute immunity of personal property from taxation by reason of military service. Motor vehicles are the one item of personal property specifically excepted from the sweeping provisions of the Act by proviso requiring an affirmative act on the part of the serviceman in order to bring that item of personal property within the immunity granted. The reason for this exception is obvious and is discussed in detail hereinafter.

Whether the Federal statute is held to create a legal fiction,[1] as was the view of the Court below (R. 30, 40 and 53); or whether it is held to be a procedure for relieving servicemen of the burden of local taxation by denying the several states of their inherent right to tax property within their borders under certain circumstances; it is clear that the Act of Congress does not grant a blanket immunity from taxation; and the result is the same insofar as motor vehicles are concerned; for the serviceman must have complied with the terms of the Act in order to claim the benefit and protection afforded thereby.

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1. *Blackstone* v. *Miller*, 188 U.S. 189, 204, held that "when logic and the policy of a state conflict with a fiction due to historical tradition, the 'fiction' must give way." See also *Liverpool L & G Ins. Co.* v. *Board of Assessors*, 221 U.S. 346, p. 354.

A. The Legislative History of Present Section 514 Clearly Refutes the Argument Made for Petitioner That Blanket Immunity from Taxation Is Granted.

Contrary to the statement by the *Amicus Curiae* (U.S. Br. p. 5) that there is no legislative history of Section 514 (2), all of the legislative history is contrary to the position taken for Petitioner and by the United States in this case.

Appendix "H" of the original brief for Petitioner (Pet. Br. 58-74) shows that the amendment of Section 514 being considered by Congress in 1944, H.R. 4733, would have granted blanket immunity from taxation of personal property of servicemen by any state other than the state of the domicile of the serviceman (Pet. Br. 59-62). The proposed amendment was transmitted to the Judge Advocate General and his remarks and recommendations concerning it were requested (Pet. Br. 58). Pursuant to this request, the proposed amendment was given mature consideration by the Judge Advocate General and there was drafted a substitute bill which retained the blanket immunity of personal property from taxation (Pet. Br. 62-69), except motor vehicles, and a proviso dealing exclusively with that item of personal property was added. The War Department recommended that the bill so drafted be substituted for H.R. 4733 (Pet. Br. 70-74). In the letter of transmittal from the Secretary of War to the Chairman of the House Committee on Military Affairs, it was pointed out that by the proviso motor vehicles were included within the terms of the bill on condition that the license, fee, or excise required by the state of domicile has been paid (Pet. Br. 71).

A comparison of the draft of bill (Pet. Br. 72-73) and the Petitioner's Exhibit "A" (Pet. Br. 33-34), except ~~from~~ for

the material added by the 1962 amendment, shows that the substitute bill recommended by the War Department was passed by Congress.

Thus, it is shown by Petitioner's own exhibits that the blanket immunity now contended for him was rejected by the Congress at the request of the War Department. The adoption by this Court of the construction of the statute sought by Petitioner would not only be contrary to the plain unambiguous language adopted by Congress, but would have the Court translate the Act by a process of interpretation into an equivalent of the bill Congress rejected at the request of the War Department. This Court has consistently refused to so translate Acts of Congress. *Western Union Telegraph Company* v. *Linroot*, 323 U.S. 490, 508-509.[2]

Whiting v. *City of Portsmouth*, 202 Va. 609, 118 SE2d 505, considered the provisions of §514 (2) pertinent here and held that a serviceman was not entitled to the immunity contained in §514 (1), unless he had complied with the motor vehicle laws of the state of his domicile. The case was decided on March 6, 1961, by the highest appellate Court of the State of Virginia.

With that construction of §514 (2) outstanding, the Congress amended §514 (1) to overturn a construction of §514 (1) by the U. S. District Court of the Eastern District of Virginia. In *United States of America, et al.* v. *Arlington County, Virginia, et al.*, 326 F.2d 929, p. 933, the Fourth Circuit Court said; "Legislative history (of the 1962 amendment of Section 514 (1)) states that the change was made in order to clarify the original intent of the Act that only the 'home' state should have the right

2. See also *Blau* v. *Lehman*, 368 U.S. 403; *Alaska* v. *American Can Company*, 358 U.S. 224; and *U. S.* v. *St. Paul M & M R Company*, 247 U.S. 310.

to tax." *Section 514 (2)* was not amended to clarify its provisions or otherwise change the interpretation placed thereon by *Whiting* v. *City of Portsmouth, supra.*

B. The Proviso Attached to the Act upon the Recommendation of the War Department Specifically Includes Motor Vehicles Within the Provisions of the Act Provided the License, Fee, or Excise Required by the State in Which the Serviceman Is Domiciled Has Been Paid.

The effect of the substantive enactment was to forbid all forms of taxation by states other than the state of the domicile of the servicemen. But the law theretofore had been otherwise, and it continues to be otherwise where the Act does not apply. The purpose of the proviso was to exclude from the operative effect of the new rule cases where the serviceman failed to comply with the terms of the proviso.

Cox v. *Hart*, 260 U.S. 427, 435, held: "The office of a proviso is well understood. It is to except something from the operative effect, or to qualify or restrain the generality of the substantive enactment to which it is attached. . . ."

"The general office of a proviso is to except something from the enactment clause, or to qualify and restrain its generality and prevent misunderstanding . . . Its grammatical and logical scope is confined to the subject matter of the principal clause." *U. S.* v. *Morrow*, 266 U.S. 531, 534-535.

The general act provides that for the purpose of taxation ". . . with respect to personal property, or the use thereof, . . . 'personal property' . . . shall not be deemed . . . to have a situs for taxation . . ." in any state except that wherein the serviceman is domiciled. The proviso

makes the operative effect of the Act include motor vehicles provided the license, fee, or excise required by the state of domicile has been paid.

The general act with the proviso concerning motor vehicles provides that for the purpose of taxation ". . . with respect to personal property, or the use thereof, . . . 'personal property' . . . shall not be deemed . . . to have a situs for taxation . . ." in any state, except that wherein the serviceman is domiciled, ". . . provided, that the license, fee or excise required by the State . . . in which he is domiciled has been paid."

This proviso places an affirmative duty on the serviceman to pay the license, fee, or excise required by the laws by his home state in order to bring the property within the terms of the principal clause.

POINT II

Failure to Comply with the Terms of the Proviso Removes the Property from the Blanket Immunity from Taxation and Subjects It to the General Law.

It is contended for Petitioner that the state of his domicile does not require the payment of a license, fee, or excise because the statutes of South Carolina require such payment of a license, fee, or excise only upon house trailers brought into that state or moved along the highways thereof.

The question is not whether the home state of Petitioner conditions its requirement of the payment of a license, fee, or excise upon motor vehicles being brought into that state or drawn along the highways thereof. The question is whether Petitioner was required to pay the license, fee, or excise provided for by the laws of his home state in order to bring himself within the terms of the proviso engrafted upon the Federal Act and thereby

bring his motor vehicle within the terms of the immunity granted.

South Carolina's statutes dealing with house trailers clearly provide that a house trailer may or may not have motive power of its own, §*46-2 (13)*, and must be equipped for use as a conveyance on streets or highways §*46-35.3*. It is, also, clear that South Carolina requires such house trailers to be registered §§*46-35.3* and *46-100*, and that no license may be issued or registration completed until all taxes legally due thereon have been paid §*46-100.1*. All citations in this paragraph are from *10 Code of Laws of South Carolina 1962* (1962 Supp.) (Pet. Br. pp. 47-49) Petitioner's house trailer must have had license, fees and taxes paid thereon in order for it to be properly registered under the laws of that state. The house trailer had a situs within that state provided such licenses, fees and taxes had been paid. Of course, if Petitioner had paid the taxes required by the laws cited above, Mississippi could not have required any further payment.

Section 514 grants to servicemen blanket immunity from all taxes other than those imposed by the state of their domicile except those imposed upon motor vehicles.

It is obvious from the language used it was the intent of Congress to include motor vehicles of servicemen within the sweeping provisions of the immunity granted only upon condition that the motor vehicle owner pay the license, fee, or excise required to be paid by the laws of his home state and license plates be secured therefor.

The right to elect is clear. The requirement that the election be made is equally clear.

The adoption by this Court of the construction of the Federal Act urged for Petitioner and the application of the reasoning contained in Petitioner's brief will result

in members of the armed forces being authorized to decline, with Federal immunity, from registering their personally owned motor vehicles in any state or being free to select the state in which their motor vehicles will be registered in the event they and they alone decide that the motor vehicles should be so registered. It is submitted that such a construction would do violence to the intent of Congress and would result in having unregistered motor vehicles using the highways of the various states thereby adding unnecessary burdens to traffic control, accident investigation and law enforcement.

The *Amicus Curiae* recognizes that all of the several states have required the registration of motor vehicles, and the payment of a license, fee, or excise thereon, since 1920 (U.S. Br., p. 11 and App. "C" thereof pp. 28-29). As shown by the exhibit to the brief of the U. S. Department of Justice, the various states require; (1) the registration of motor vehicles used on the highways "of the state" or "in the state."; (2) the registration of motor vehicles using "a highway" or "any highway" of the state; (3) the registration of every motor vehicle "driven" or "operated in this state" and; (4) requiring the registration by "every owner of a motor vehicle." None of the several states would be authorized to exercise extra-territorial jurisdiction in order to require payment of license, fees or excise by motor vehicle owners when the motor vehicle does not ~~not~~ have a situs within the State. The proviso of §514 does authorize the various states to issue license plates and to collect license, fees or excises from servicemen when and only when they elect to bring their motor vehicles within the terms of the Act of Congress.

Indeed the *Amicus Curiae* for the reasons stated above, and the certain knowledge that unregistered motor vehicles would add to the current hazards of the high-

way, urges this Court to reverse *California* v. *Buzard, No. 40*, a companion case to the case at bar.

The *Amicus Curiae* seeks to make a distinction without a difference by arguing that California had a right to impose criminal sanctions for failure to register, whereas it is urged that Mississippi does not have the right to require the payment of taxes when the serviceman in question has clearly failed to comply with the terms of the proviso.

The issue common to both cases is the right of a state to require the registration, and the payment of licenses, fees or excises, and other taxes, on personally owned motor vehicles physically located in that state, when the motor vehicles belong to members of the armed forces of the United States who are domiciled in another state, but who are in the state other than that of their domicile by reason of orders of their commanding officers, when the personally owned motor vehicles are not registered in, and have never been physically located in, the state of the domicile of the servicemen.

The Supreme Court of Mississippi held that failure of the Petitioner to comply with the terms of the proviso, or to pay the license, fee, or excise required by a statute granting exemption from ad valorem taxes, left the general rule in effect and that the property was taxable as all other items of personal property are taxable within the jurisdiction where it is found.

POINT III

Rules of Statutory Construction Require That All of the Provisions of an Act of Congress Must Be Given Effect.

As is correctly stated by the *Amicus Curiae;* "In 1944, when Congress amended Section 514 to deal with motor vehicle licenses, fees and excises, *all* states had statutes requiring the registration of motor vehicles, payment of license fees, and display of license plates." (U.S. Br. p. 11).

By urging for Petitioner that the proviso does not contemplate affirmative action on the part of servicemen to pay the license, fee, or excise required by the laws of the state of their domicile, the Court is being asked to construe the statute in a vacuum without regard to the laws of the several states and contrary to the true purpose of the proviso. In fact, such a construction would require a declaration that the proviso is ineffective.

"Where there is no ambiguity in the words of a statute there is no room for construction." *Yates* v. *United States,* 354 U.S. 298, 305.

"The language of a statute should be read, not in a vacuum, but in the light of the policies it was intended to serve." *Penn. R. Co.* v. *Rychlik,* 352 U.S. 480, 488.

"The Supreme Court, in construing a statute, must give effect, if possible, to every clause and word of a statute, and should avoid so interpreting a statute as to emasculate an entire portion thereof." *United States* v. *Menasche,* 348 U.S. 528, 538-539.

"The Supreme Court will not lightly conclude that a congressional enactment has no purpose or function, but will strive to give appropriate meaning to each of a stat-

ute's provisions and its predecessors." *Mercantile Nat. Bank* v. *Langdeau*, 371 U.S. 555, 560.

The proviso defines the term "taxation" to include ". . . but not be limited to license, fee, or excise . . ." The Supreme Court of Mississippi held that the inclusion of two of the three general classes of taxation, *i.e.*, licenses and excises, following the words ". . . but not limited to . . ." necessarily included the other general classification of taxes, *i.e.*, ad valorem (R. 58). Such taxes were included in the immunity granted subject to compliance with the proviso. They were excluded when the terms of the proviso were not complied with. To construe the Act otherwise would make the words ". . . but not be limited to . . ." ineffective.

"If a statute admits a reasonable construction which gives effect to all of its provisions, the United States Supreme Court will not adopt a strained reading which renders one part a mere redundancy." *Jarecki* v. *G. D. Searle & Co.*, 367 U.S. 303, 307-308.

POINT IV

The House Trailer in Question Is a Motor Vehicle for All Purposes of This Proceeding by the Clear Application of the Language of the Statutes Involved and by Petitioner's Own Admission.

It is argued for Petitioner that the house trailer in question is not a motor vehicle. By this argument, it is sought to have the Court reject and disregard the sworn statement of Petitioner (R. 16).

That statement is: "The Trailer is a 'house trailer' as defined by Section 2(a) of said House Bill No. 747 and is not and never has been registered or taxed under authority of Chapter 588, Laws of 1958 of Mississippi (R. 13)."

Chapter 588, General Laws of Mississippi 1958, was passed by the Mississippi Legislature to implement the amendment of *Section 112* to the *Mississippi Constitution of 1890*, and to thereby provide a special method of assessment and collection of taxes on motor vehicles (R. 55-56).

Sec. 3, Ch. 588, supra, the definition section, provides in part: "The subject words and terms of this section for the purpose of this Act, shall have meanings as follows: '(a) The term "motor vehicle" shall mean any device and attachments supported by one or more wheels which is propelled or drawn by any power, other than muscular power, over the highways, streets, or alleys of this state.'"

The definition quoted above is sufficiently broad to include and does include the house trailer in question. By Petitioner's own sworn statement, the application of the definition is applicable to the trailer.

The Mississippi Supreme Court did not hold that that statute or any other state statute served to deprive Petitioner, or any other member of the armed forces, of rights granted by §514. Respondents have never contended that Mississippi had such right.

Not having the power to require a waiver of a Federal right, Mississippi chose, in the enactment of *Ch. 588, supra*, to grant exemption from the ad valorem features of the Act, provided the motor vehicles were registered within that State. This was prompted, no doubt, by the certain realization that the high rate of ad valorem taxes would cause many motor vehicles of servicemen to be registered in the state of their domicile while being operated on the streets and highways of Mississippi. This would necessarily have added undue burdens upon traffic control, accident investigation and police regulations. This

was not a total surrender of the inherent power of Mississippi to tax property within its jurisdiction, but it was a special exemption granted as a matter of policy to stimulate registration of motor vehicles by non-resident servicemen where the property was physically located and being operated.

The office of Respondent, Attorney General, held that motor vehicles of non-resident servicemen could be registered in Mississippi without the payment of ad valorem taxes by virtue of the exemption contained in the Act (R. 34-35 and 56-57).

It is admitted by Petitioner that [illegible] taxes have ever been paid on the motor vehicle (house trailer) of Petitioner, and that it has never been registered in the state of his domicile or in any other state (R. 13). It is, also, admitted that the motor vehicle (house trailer) has been moved along the highways of Mississippi (R. 25) and that it is capable of being so moved at any time (R. 14).

Sec. 9352-09 (b), Miss. Code of 1942, Recp., provides, in part: ". . . that there is hereby levied an annual privilege tax upon each house trailer, or house semitrailer, of ten dollars ($10.00)."

Sec. 9352-18, Miss. Code of 1942, Recp., provides, in part: "Any person required under the provisions of this act to register and pay a privilege license tax on any vehicle shall make application therefor, . . ."

Notwithstanding the requirements of the proviso to the Federal Act, the statutes of South Carolina and the provisions of the Mississippi statutes quoted above, Petitioner continued to decline to register his motor vehicle (house trailer) while using the highways of Mississippi whenever the need arose.

Chapter 535 (H. B. #747) General Laws of Mississippi 1962, was passed to supplement the provisions of *Ch. 588, supra,* and is pari materia therewith (R. 52). The entire statute is set forth as Appendix "B" hereto. *Section 2* thereof, the definition section, provides in part. "'The subject words and terms of this section, for the purposes of this act, shall have meanings as follows:

"'(a) The term "house trailer" shall mean and include any trailer-type vehicle or mobile home, designed and constructed so as to be suitable for use for domestic, commercial, or industrial purposes, and which is constructed so that it may be moved from place to place over the highways and streets by being supported by two (2) or more wheels, and drawn or moved by motive power not its own, and which house trailer is not taxed under authority of Ch. 588, laws of 1958."

With adequate provisions for exemption from ad valorem taxes on motor vehicles of non-resident servicemen having been made in *Ch. 588, supra,* no comparable provision was included in *Ch. 535, supra.* The taxes imposed by *Ch. 535, supra,* are, of course, the taxes which it is contended for Petitioner that no liability exists, because it is now contended that the house trailer is not a motor vehicle. This contention is contrary to the sworn statement of Petitioner as applied to the statutes which he admitted were applicable.

If the petition for refund had alleged and proven that the house trailer was not, in fact, within the definition contained in *Chs. 588, supra,* and *535, supra,* the application for refund would have been approved, because the proviso would not have been brought into the matter. However, this is not the case and Petitioner is bound by his own sworn statement.

CONCLUSION

For the reasons and authorities discussed above, in addition to those contained in the Opinion of the Court below, Respondents respectfully submit that this case should be affirmed here.

Respectfully submitted,

W. D. NEAL,
Former State Auditor and

JOE T. PATTERSON,
Attorney General,
Respondents

By: .....
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CERTIFICATE

I, MARTIN R. McLENDON, do hereby certify that a copy of the foregoing Reply Brief of Respondents was mailed to LEON D. HUBERT, JR., Esq., at his regular office address, 300 Oil & Gas Building, 1100 Tulane Avenue, New Orleans, Louisiana.

.....
MARTIN R. McLENDON

APPENDIX A

§ 10007-01. Citation of Act.

This act may be known as "The Motor Vehicle Ad Valorem Tax Act of 1958," and may be cited as such.

SOURCES: Laws, 1958, ch. 588, § 1.

§ 10007-02. Purpose of Act.

The purpose of this act is, with reference to assessing ad valorem taxes on motor vehicles which are operated upon the public highways of this state, to, (a) fix the taxable year, (b) fix the tax lien date, (c) determine the method of assessing, (d) fix the date for assessing such taxes, (e) prescribe the method of collecting such taxes, and (f) to fix the date of collecting such taxes.

SOURCES: Laws 1958, ch. 588, § 3.

§ 10007-03. Definitions.

The subject words and terms of this section for the purpose of this Act, shall have meanings as follows:

(a) The term "motor vehicle" shall mean any device and attachments supported by one or more wheels which is propelled or drawn by any power, other than muscular power, over the highways, streets, or alleys of this state.

(b) The term "public highway" shall mean and include every way or place of whatever nature, including public roads, streets, and alleys of this state, generally open to the use of the public or to be opened or reopened to the use of the public for the purpose of vehicular travel, notwithstanding that the same may be temporarily closed

for the purpose of construction, reconstruction, maintenance, or repair.

(c) The term "administrator of the road and bridge privilege tax law" shall mean the official authorized by law to administer the road and bridge privilege tax law of this state.

SOURCES: Laws, 1958, ch. 588, § 3; 1960, ch. 413, § 1.

§ 10007-04. Who is liable for tax—time of payment—due date.

Any person required by law to pay a road and bridge privilege license tax on any motor vehicle shall also be liable for the ad valorem taxes due on such motor vehicle, unless otherwise specifically exempt herein. Such ad valorem taxes due shall be paid at the same time the road and bridge privilege license tax is paid, and the payment of the said ad valorem taxes due shall be a prerequisite to the issuance of the said road and bridge privilege license.

The ad valorem tax lien date for the purpose of this act shall also constitute the ad valorem tax due date which shall also be the same date that the subject motor vehicle is purchased from a bona fide dealer, if it is intended that such motor vehicle is to be operated upon the highways of this state.

In all cases, however, where the time for complying with the road and bridge privilege tax law has been extended by law as to time of payment, then the same extension of time shall apply to the date on which the ad valorem taxes on such motor vehicle must be paid. Ad valorem taxes on all motor vehicles, defined in this act, shall be calculated as of the first day of the month in which such taxes were due, regardless of any extension of time for payment of such taxes as provided hereinabove.

SOURCES: Laws, 1958, ch. 588, § 4.

§ 10007-05. Taxable and fiscal years—taxes to be collected by county and municipal tax collectors—when to be paid.

For the purpose of this act the taxable year and fiscal year shall commence each year on November first and shall end on October thirty-first of the following year, and such taxable year shall run concurrently with the taxable year now in effect in the law pertaining to the payment of the road and bridge privilege license tax on motor vehicles. Ad valorem taxes on motor vehicles shall be collected by the county tax collector for the county and state and by the municipal tax collector for the municipalities and municipal separate school districts. Ad valorem taxes for any ensuing year may be paid during the month of October, however, and said ad valorem taxes on any motor vehicle must be paid at the same time or prior to the time that the road and bridge privilege license is issued for the subject motor vehicle, unless herein otherwise specifically exempt from such ad valorem taxes.

In cases where the privilege tax is not due on a motor vehicle prior to November thirtieth then the ad valorem taxes due on such motor vehicle shall be calculated for only the proportional part of the taxable year remaining, prorated from the first day of the month on which said taxes are due.

SOURCES: Laws, 1958, ch. 588, § 5.

§ 10007-06. Ad valorem tax receipts to be presented before road and bridge privilege license issued—reports—penalties—auditing of sheriff and tax collectors.

In cases where the road and bridge privilege tax license is issued by the administrator of the road and bridge privilege tax law, before he shall issue such license he

shall require that a tax receipt, made out on the prescribed form and properly issued, be presented to him showing that all ad valorem taxes due on such motor vehicle have been paid according to the situs of the subject motor vehicle as shown by the written application for such privilege license. If the application for such privilege license reveals that the situs of the subject motor vehicle is in a municipality or municipal separate school district, then the said administrator of the road and bridge privilege tax law, before issuing said privilege license, shall require that a tax receipt made out on the prescribed form and properly issued be presented to him showing that such ad valorem taxes due have also been paid.

The said administrator of the road and bridge privilege tax law shall secure a rubber stamp to be used in stamping each such ad valorem tax receipt so presented to him. This stamp shall show the date of issuance and the receipt number of the privilege license issued for each corresponding ad valorem tax receipt, date and license receipt number to be filled in with ink, or with indelible pencil, by and in the name of the said administrator of the road and bridge privilege tax law and counter-signed by the issuing deputy or clerk. The number of the corresponding ad valorem tax receipt presented shall be written by him on the privilege license receipt. In cases where a separate municipal ad valorem tax receipt for motor vehicles is necessary, the same procedure as outlined herein shall be followed with reference to the municipal tax receipt.

Said administrator of the road and bridge privilege tax law, his deputies or clerks violating the provisions of this section shall be liable on their official bonds in double the amount of the ad valorem taxes due on each such motor vehicle.

Twice each fiscal year the said administrator of the road and bridge privilege tax law shall file a report with the State Auditor showing the privilege license receipt number, the corresponding ad valorem tax receipt number or numbers, and the name under which such license receipt was issued, for each such license receipt issued by him. A separate report shall be made for each county involved, and a duplicate copy of such report shall be furnished the respective sheriff and tax collector of each county involved, and the tax collector of each municipality in said county. One of these reports shall be made on or before May fifteenth covering all such license receipts issued by him for the then current fiscal year, including those issued through the month of April. Another such report shall be made on or before November fifteenth covering all such license receipts issued by him for the remaining portion of the immediately prior fiscal year.

The aforesaid reports shall be preserved by the State Auditor, and in auditing the sheriff and tax collector for the corresponding fiscal year such tax receipts indicated on these reports shall be reconciled with the corresponding ad valorem tax receipt number in the office of the sheriff and tax collector.

SOURCES: Laws, 1958, ch. 588, § 6; 1960, ch. 413, § 2.

§ 10007-07. Copy of tax levy to be furnished to county tax collector—postponement of collections where adoption of tax levy is delayed—notice to be given—owners not to be penalized.

On or before September fifteenth the clerk of the board of supervisors shall furnish the county tax collector a certified copy of the county tax levy for the ensuing year. This tax levy shall not only show the tax levy for

each purpose for which it was levied, but it shall also show the total tax levy for each separate taxing area in the county, including the state ad valorem tax levy.

If for any reason the said county tax levy is not adopted and/or delivered to the county tax collector on or before the first day of October then the said tax collector is hereby authorized to postpone for one month the beginning of the collection of ad valorem taxes and road and bridge privilege taxes on all motor vehicles legally situated in his county and liable for said taxes, and the tax collector shall notify the taxpayers of his county by newspaper publication that the beginning of the collection of such said taxes is postponed for one month, due to the fact that he has not been furnished with a certified copy of the said tax levy, as provided by law. Copies of this said newspaper notice shall be furnished the motor vehicle comptroller and the Mississippi Highway Safety Patrol, and the provisions of said notice shall be controlling in all respects on such agencies and on any other peace officer, and no damages, penalties or interest shall accrue against any owner of such motor vehicles during such postponement period.

If such tax levy is not furnished the tax collector within the said one month, then the same procedure as to postponement shall be followed and the same immunities shall apply from month to month until such tax levy has been furnished the tax collector.

SOURCES: Laws, 1958, ch. 588, § 7.

§ 10007-08. How assessed value is determined.

Motor vehicles shall be assessed uniformly according to value and such assessed value shall be determined by an assessment schedule which shall be prepared and made of minute record by the state tax commission and shall

be certified to the president of the board of supervisors of the various counties of the state, and to the mayor or the presiding officer of the municipal boards of the various municipalities, and municipal separate school districts of the state, in care of the clerk of said respective boards, as the official motor vehicle assessment schedule which shall be used by the proper officials of both respective jurisdictions in assessing motor vehicle ad valorem taxes for the ensuing fiscal year.

SOURCES: Laws, 1958, ch. 588, § 8.

§ 10007-09. County tax collector to be supplied with tax receipts—form of such receipts—how to be used.

The tax collector of each county shall be supplied with a sufficient number of tax receipts to be used by him in the collection of both the privilege tax and the ad valorem tax on all taxable motor vehicles in his county. The tax receipt for these purposes shall be a combination receipt and shall carry a number which shall be the same number as that of the road and bridge privilege tax receipt and tag number for each such motor vehicle. Under no circumstances shall one tax receipt be used for receipting the ad valorem taxes on more than one motor vehicle.

There shall also be ample provisions made on these tax receipt forms for receipting ad valorem taxes collected for any municipality or municipal separate school district in the county, in case the county tax collector is legally directed as hereinafter provided to collect such taxes at the same time such tax collections are made for the county. This combination tax receipt form shall be prescribed by the Tax Commission in cooperation with the administrator of the road and bridge privilege tax law,

and the administrator of the road and bridge privilege tax law shall supply them.

The county tax collector of each county shall also secure an ample supply of ad valorem tax receipts to be used by him in collecting the ad valorem taxes on all motor vehicles in his county for which the road and bridge privilege tax license will be issued by the administrator of the road and bridge privilege tax law. Ample provisions shall also be made on these forms for receipting any municipal and municipal separate school district ad valorem taxes collected, in case the county tax collector is legally directed to collect such taxes. All such ad valorem tax receipt forms for each county, for the collection of ad valorem taxes only, shall be numbered in consecutive order beginning with the number "one"; they shall be made up in triplicate, the exact form of which shall be prescribed by the State Tax Commission, and they shall be supplied by the county board of supervisors. A separate receipt shall be issued for each motor vehicle on which ad valorem taxes are paid.

SOURCES: Laws, 1958, ch. 588, § 9; 1960, ch. 413, § 3.

§ 10007-10. Assessment schedule to be prepared by state tax commission—basis of schedule—corrections.

The state tax commission shall, on or before the fifteenth day of June of each year, prepare and adopt, by minute record, an assessment schedule of motor vehicles, as defined in this act, which such assessment schedule, and no other, excepting as may be hereinafter provided, shall be used by the tax collector of each county and each municipality and municipal separate school district in the state, in assessing, calculating and collecting ad valorem

taxes in each respective jurisdiction on all motor vehicles liable for such tax as authorized by this act.

In preparing the said assessment schedule the tax commission may make use of, as a base, the values of the various makes, models, year of manufacture, and types of motor vehicles as adopted by some reputable nation-wide agency or association which regularly compiles and furnishes such information as to actual value of the different motor vehicles as to make, model, type, and year of manufacture, or by any other method or methods or combination of methods which in its judgment will tend to equalize the assessed value of property of this class with property of other classes in general. These various motor vehicles, together with any special equipment, may be grouped into as many categories as, in the judgment of the tax commission, will be most practical in effecting equalization. Vehicles of a manufactured year model next succeeding the adoption of such schedule shall be assessed at a value which is twenty per cent (20%) higher than that at which the latest and most similar model is assessed for as set out in the schedule.

In preparing the said assessment schedule the tax commission shall apply such a percentage to the base value of such motor vehicles which, in its best judgment, will produce an assessed value which will equalize the assessed value of motor vehicles with the assessed value of other property in general, throughout the state, so far as is practical.

The tax commission shall also make necessary corrections and amendments to this schedule from time to time throughout the fiscal year, and in so doing the general procedure set out above shall be followed.

SOURCES: Laws, 1958, ch. 588, § 10; 1960, ch. 473, § 1.

§ 10007-11. Copy of assessment schedule to be forwarded to board of supervisors and municipal board —notice of inspection of schedule—hearings of petitions for reductions.

On or before the first day of July each year the tax commission shall forward to the president of the board of supervisors of each county and to the mayor or other presiding officer of the municipal board of each municipality, in care of the clerk of the said respective boards, a certified copy of the assessment schedule which is designed to become effective for the then ensuing fiscal year in assessing and collecting ad valorem taxes on motor vehicles as defined in this act.

At the July meeting of the board of supervisors of the county and the municipal board of the municipalities, the said boards shall examine and consider the said motor vehicle assessment schedule and shall adopt an order on their respective minutes directing the clerk of said respective boards to give notice thereof by newspaper publication, in a newspaper having general circulation in such respective jurisdictions, that such motor vehicle assessment schedule is ready and open for inspection and examination by any interested taxpayer, and that within a period of fifteen (15) days after such publication, the date to be specified in publication notice, the respective boards shall reconvene in regular or adjourned meeting to hear and take action on any complaint, filed in writing, objecting to and petitioning for a specified reduction on any portion or portions of the assessment schedule affecting the complainant directly. The respective boards shall continue in session from day to day until all such objections and petitions have been heard and action has been taken thereon. The order and notice provided for herein shall refer by name to this chapter and it shall

not be necessary to incorporate in said order and notice the provisions of this chapter.

SOURCES: Laws, 1958, ch. 588, § 11; 1960, ch. 473, § 2.

§ 10007-12. Filing and disposition of objections to assessment schedule and claims for adjustment—dissatisfied taxpayer may sue for taxes paid, when.

Any person objecting to any portion or portions of the motor vehicle assessment schedule affecting him or her directly shall file a written objection and claim for adjustment, in triplicate, with either the board of supervisors of the county or the municipal board of the municipality or with both such boards, on a form to be designed and supplied by the tax commission. The motor vehicle owner shall set forth therein in detail the grounds for his objection and claim for adjustment, with a full and complete identifiable description of the subject motor vehicle.

If the board of supervisors or the municipal board, as the case may be, is of the opinion that the objection and claim for adjustment of the motor vehicle owner has sufficient merit, then the original and duplicate copies of the said objection and claim together with any recommendation made by either of the said governing boards shall be forwarded to the tax commission for approval or disapproval.

If the tax commission is of the opinion that the said objection contains sufficient merit, then the tax commission shall make whatever adjustment on such claim as in its judgment is fair and equitable; if, on the contrary, the tax commission is of the opinion that the said objection to the proposed assessment does not have sufficient merit

then the tax commission shall disapprove the claim. In either case, the tax commission shall return the original copy of the objection and petition to the clerk of the board of supervisors or to the clerk of the municipal board, as the case may be, with its action duly stated thereon. The decision of the tax commission in disapproving such a claim shall be final as between the board of supervisors and/or the municipal board and the tax commission, and the clerk of the respective boards shall then notify the claimant that his adjustment claim has been disapproved by the tax commission.

A petition for adjustment originating in either the county or a municipality of the county, if approved by the tax commission, shall become effective, as approved, in both jurisdictions, and in cases where the county tax collector does not collect said taxes for the municipality, then it shall be the duty of the clerk of the jurisdiction in which the claim for adjustment originated to officially notify the tax collector of the other jurisdiction, by citing the minute record of such action and properly identifying the subject motor vehicle.

If the tax commission approves a claim for the reduction of a proposed assessed value of any specific motor vehicle, then upon receipt of such notice by the clerk of the board of supervisors of the county or by the clerk of the municipal board, as the case may be, a minute record shall be made and a certified copy of such action shall be furnished the tax collector, and in making his report the tax collector shall cite on the ad valorem tax receipt and in his report the minute book and page as legal reason for such reduction in assessed value on any such motor vehicle. Under no circumstances shall a tax collector vary from the said adopted assessment schedule in calculating and collecting motor vehicle ad valorem taxes unless

such petition for reduction has been approved by the tax commission, and the tax collector has filed in his custody written official authority therefor from the clerk of the respective board, and evidence of such action is cited as hereinabove provided. An adjustment of the proposed assessed value of one or more motor vehicles of a certain group or class, under this procedure, shall not affect the proposed assessed value of other motor vehicles of the same group or class.

Any taxpayer dissatisfied with any portion of the assessment schedule directly affecting him may pay the resulting tax under protest and sue for recovery of all or any portion of the tax paid, provided that he requests the tax collector to indicate on the tax receipt at the time the tax is paid that the said tax is being paid under protest. This recourse is available, however, only to the taxpayer who filed objection and adjustment claim to the proposed assessment during the time set for filing such objection, as provided hereinabove, excepting in cases where the cause for such protest originated subsequent to the time for filing such protest.

SOURCES: Laws, 1958, ch. 588, § 12.

§ 10007-13. County tax collector's reports and records of tax collections—remittance of tax collections to municipalities.

Within twenty (20) days after the end of the month the county tax collector shall file a report showing the amount of motor vehicle ad valorem taxes collected by him for the previous month. This report shall be made in part in conjunction with and as a part of the monthly report made on the collection of road and bridge privilege taxes for the same period. The form for this portion of said report shall be prescribed by the administrator of

the road and bridge privilege tax law in cooperation with the State Tax Commission.

This said report shall show, in addition to the information prescribed by the administrator of the road and bridge privilege tax law, the following information for each motor vehicle on which ad valorem taxes were paid; the code number of the vehicle as fixed by the assessment schedule, the assessed value of the vehicle, the situs of the vehicle as to school district, road district, levee district, municipality, the total tax rate applicable, ad valorem taxes, damages, if any, and the total ad valorem taxes and damages. These sheets shall be numbered in consecutive order, and shall be made in quadruplicate. The original copy of this report shall be placed in a suitable binder and retained by the county tax collector as a permanent record, the first and second copies shall be forwarded to the administrator of the road and bridge privilege tax law and commission of public safety respectively, as now provided by law, and the third copy shall be delivered to the chancery clerk.

When the above mentioned portion of the report has been completed, a recapitulation of it shall be made on a separate sheet, showing by classes the total number of road and bridge privilege licenses issued, the amount of money collected for the license plates, the total road and bridge privilege taxes collected by classes, and the total amount of ad valorem taxes collected designating the amount collected for each separate taxing area. This report shall also be made in quadruplicate. The tax collector shall retain the original as a permanent record, the first copy shall be forwarded to the administrator of the road and bridge privilege tax law, the second copy shall be forwarded to the tax commission, and the third copy shall be delivered to the chancery clerk.

Motor vehicle ad valorem tax collections shall be entered in the tax collector's cash book as reflected by the said recapitulation, showing by taxing area, the total assessed value and total such taxes collected each month for each separate taxing area, and it shall not be necessary that either the tax receipt number or the taxpayer's name be entered, as required by Chapter 188. Laws of 1934 (Section 9911, Mississippi Code of 1942), for other ad valorem tax collections.

In all cases where the county tax collector is ordered to collect motor vehicle ad valorem taxes for a municipality, the tax collector shall furnish to each such municipality a certified statement as to the total assessed value of the motor vehicles on which taxes were collected for such municipality, together with an additional statement showing the net amount of taxes collected for such municipality less his indicated collection fees. This report shall be made to the municipality at the same time a remittance is made to the municipality for all such net ad valorem taxes collected for the said municipality for the previous month. This remittance and report shall be made to the municipality on or before the twentieth day of the month following that in which the collections were made.

SOURCES: Laws, 1958, ch. 588, § 13; 1960, ch. 413, § 4.

§ 10007-14. Owner may receive credit for taxes paid where motor vehicle is destroyed—application for —perjury.

If any motor vehicle on which the ad valorem taxes prescribed in this act have been paid, shall be totally destroyed by fire, tornado, flood, collision, accident, or acts of Providence, then the owner of such motor vehicle, upon filing a petition and submission of sufficient proof,

may be credited with the amount of the ad valorem taxes on the proportional part of the fiscal year remaining, less ad valorem taxes accruing on the salvage price, if any, in calculating the amount of ad valorem taxes due on any replacement for such a motor vehicle, if replaced during the then current fiscal year. In no event, however, shall such person claiming credit under this provision be entitled to a cash refund.

In order to obtain benefit of this credit, such person must submit proof supported by affidavit of three (3) reputable citizens that such motor vehicle has been totally destroyed, and a statement must be made as to the estimated amount of salvage value remaining. The application for this credit and the three (3) supporting affidavits must be notarized by an officer who has legal authority to notarize such instruments.

Any person who makes or swears to a false statement or makes or swears to a statement of facts without personal knowledge of such facts, in any connection with an adjustment claim as referred to above, shall be guilty of perjury and upon conviction shall be punished as now provided by law. The same procedure as outlined above shall apply to municipalities and municipal separate school districts in proper cases, if the subject motor vehicle has been totally destroyed as outlined above.

SOURCES: Laws, 1958, ch. 588, § 14.

§ 10007-15. Procedure where municipality desires county tax collector to collect motor vehicle ad valorem taxes—fees—inspection of tax collector's records—penalties—tax collector liable on official bond.

Any municipality in the state desiring to have its motor vehicle ad valorem taxes collected by the county tax collector at the same time and in the same manner

provided for by this Act for collecting county and state ad valorem taxes on motor vehicles may do so by proceeding as follows:

On or before the first day of May the municipal board shall enter an order upon its minutes signifying its desire to have the county tax collector collect its motor vehicle ad valorem taxes at the same time and in the same manner that he collects the county and state ad valorem taxes on such motor vehicles, for the ensuing fiscal year. A certified copy of this order shall be furnished the tax collector of the county, the State Tax Commission and the administrator of the road and bridge privilege tax laws. In such case it shall be mandatory that such municipal ad valorem taxes be collected by the county tax collector.

The authorization of the tax collector to collect municipal taxes on this class of property shall also include the collection of such taxes on such property located in the municipal separate school district, if any, although such property is located outside of the corporate limits of such municipality.

On or before September fifteenth the municipal clerk shall certify to the county tax collector a copy of its official tax levy for the then ensuing fiscal year. On this tax levy the clerk shall not only certify as to the tax levy for each purpose for which it was levied, but, he shall also certify as to the total amount of the levy for all municipal purposes, and he shall show separately the total amount of the levy for the municipal separate school district, if the said municipality is a part of a municipal separate school district.

For his services in collecting all such municipal and municipal separate school district ad valorem taxes, the

tax collector shall add such taxes to the regular county ad valorem taxes and from such total amount he shall retain the same fee as if these same collections were made for ordinary taxing districts of the county, as provided by Chapter 217, Laws of 1952 (Section 3936, Mississippi Code of 1942, as amended), excepting that, in no instance shall his fee be less than two per cent (2%) for collecting municipal and municipal separate school district taxes. He shall on or before the twentieth day of the following month remit to the municipality the remaining portion of such taxes so collected for and during the preceding month. A report of the total assessed value of the subject motor vehicle on which such municipal ad valorem taxes were collected for the preceding month shall be forwarded to the municipality along with the said remittance.

The records of the county tax collector shall be available at any time during regular office hours for inspection by the municipal authorities or their authorized agents to determine as to whether or not any such taxpayer has been properly assessed, both as to value and as to situs of the subject motor vehicle and as to whether or not the proper tax has been collected and remitted for the benefit of the municipality and municipal separate school district, in proper cases, if such municipality has officially authorized said tax collector to collect its motor vehicle ad valorem taxes, as provided hereinabove.

For similar violations of this Act the same penalties shall apply in favor of any municipality, in proper cases, which apply in favor of the counties. The tax collector shall be liable on his official bond to the municipality for any failure on his part to assess, collect, and remit the correct amount of taxes due any municipality, under the

provisions of this Act, on any motor vehicle for which he collects county and state ad valorem taxes.

SOURCES: Laws, 1958, ch. 588, § 15; 1960, ch. 413, § 5.

§ 10007-16. Owner liable for motor vehicle ad valorem taxes to make application for privilege license—what to contain—penalty for misstatements—liability of tax collector on official bond.

Each motor vehicle owner liable for this said ad valorem tax shall each year file with the tax collector a written application for the motor vehicle road and bridge privilege license. In addition to the information required by Chapter 474, laws of 1950 [§ 9352-18*], this application shall also furnish information showing as to what school district, what road district, if any, what levee district, if any, and any information as to other special taxing districts which represent the situs of the subject motor vehicle. The proper road and bridge privilege tax receipt number shall be written on the said applications and they shall be filed in consecutive order in a suitable filing cabinet. This application form shall be prescribed by the tax commission in cooperation with the administrator of the road and bridge privilege tax law, and shall be supplied by the board of supervisors.

These applications shall be preserved by the tax collectors until the board of supervisors shall, by written order, authorize that they may be destroyed. Such authority shall not be issued by the said board of supervisors until a complete audit of the tax collector has been made and all records are found to be in order and all taxes are found to have been properly calculated, collected, and all funds arising therefrom have been prop-

erly accounted for and paid into the proper funds as certified to by the Auditor of Public Accounts.

Any material misstatement of facts contained in this privilege license application shall constitute a misdemeanor and upon conviction the offending person shall be punished according to law.

The tax collector shall be liable on his official bond for the amount of any taxes lost by reason of his failure to comply with any of the provisions of this Act, and it shall be the duty of the State Auditor of Public Accounts to so charge the account of any such tax collector and to enforce payment to the proper authorities of any such funds due and unpaid.

SOURCES: Laws, 1958, ch. 588, § 16; 1960, ch. 413, § 6.

§ 10007-17. Tax assessors not required to assess motor vehicles—assessed value of personal property in county and municipality—order directing county tax collector to collect municipal taxes effective until rescinded.

Upon enactment of this law the tax assessors of the various counties and municipalities of the state shall not be required to assess motor vehicles, as defined in this Act, in preparing their regular assessment rolls, from year to year.

The total assessed value of all motor vehicles as reflected by the annual report of the county tax collector shall be considered as a legal part of the assessed value of personal property in the county and the total assessed value of motor vehicles on which taxes are paid during the month of October for the ensuing fiscal year and during the months of November and December for the current fiscal

year shall be used in determining the total assessed value of a county for classification purposes, and the total assessed value of all such motor vehicles of the municipality for the same period, as reflected by the annual report of the county tax collector, shall be considered as a legal part of the assessed value of personal property in the municipality in determining the total assessed value of such municipality.

Any order legally adopted and made of minute record by the municipal authorities directing the county tax collector to collect its ad valorem taxes on motor vehicles as provided by this Act shall remain in force from year to year until rescinded by official order duly recorded and certified to the county tax collector and the municipal assessor.

For any year any municipality may adopt an order rescinding its former order authorizing the county tax collector to collect its ad valorem taxes on motor vehicles, provided that such rescinding order is duly adopted, made of minute record, and certified to the county tax collector at least sixty (60) days prior to the beginning of the ensuing fiscal year, and such order shall be published one time in a newspaper having general circulation in the subject municipality.

SOURCES: Laws, 1958, ch. 588, § 17; 1960, ch. 413, § 7.

§ 10007-18. Preparation of assessment schedule where municipality elects not to adopt schedule prepared by state tax commission.

Any municipality in the state electing not to adopt the motor vehicle assessment schedule for the assessment and collection of its ad valorem taxes on motor vehicles, provided for by section [§ 10007-10] of this act, shall order

its tax assessor to prepare and file with the municipal board of such municipality an assessment schedule for such purposes, excepting motor vehicles owned by public utilities and railroads, which, under the authority of section 9825, Mississippi Code of 1942, are assessed by the state tax commission. The said order shall be made of minute record and a certified copy shall be furnished the municipal tax assessor.

In preparing the assessment schedule the municipal tax assessor shall comply in general with the provisions of section 10 [§ 10007-10] of the act excepting that he shall equalize the assessed value of motor vehicle with the assessed value of other property located within his jurisdiction rather than with the assessed value of property throughout the state.

SOURCES: Laws, 1958, ch. 588, § 18.

§ 10007-19. Duties of municipal tax assessor—proceedings by municipal board.

On or before the first day of July each year the municipal tax assessor shall file with the municipal clerk a copy of the assessment schedule. The tax assessor shall attach his certificate to the assessment schedule, prior to its delivery to the clerk. This assessor's certificate shall cite the authority under which the assessment schedule was prepared, and it must also contain a statement that in his best judgment the assessed value of motor vehicles shown therein are equalized with the assessed value of other real and personal property in general throughout the subject jurisdiction.

When the said municipal assessment schedule has been filed with the municipal board, then such board shall follow the same procedure for the subject municipality as

that provided for by Section 11 of this Act [§ 10007-11] with reference to the county board of supervisors.

SOURCES: Laws, 1958, ch. 588, § 19; 1960, ch. 413, § 8.

§ 10007-20. Objections to municipal assessment schedule, and claims for adjustment—disposition of—dissatisfied taxpayer may sue for taxes paid, when.

Any person objecting to any portion or portions of the said motor vehicle assessment schedule affecting him or her directly shall file a written objection and claim for adjustment, in duplicate, with the municipal board. The motor vehicle owner shall set forth therein in detail the grounds for his objection and claim for adjustment, with a full and complete identifiable description of the subject motor vehicle.

If the municipal board is of the opinion that the objection and claim for adjustment of the motor vehicle owner has sufficient merit then it shall make whatever adjustment on such claim as in its judgment is fair and equitable; if, on the contrary, the municipal board is of the opinion that the said objection to the proposed assessment does not have sufficient merit then the said board shall disapprove the claim, and the claimant shall be so notified.

If the municipal board approves a claim for the reduction of a proposed assessed value of any specific motor vehicle, then a minute record of such action shall be made by the clerk of said board and a certified copy of such action shall be furnished the tax collector, and in making his report the tax collector shall cite on the ad valorem tax receipt and in his report the minute book and page as

legal reason for such reduction of assessed value on any such motor vehicle. Excepting, as hereinabove provided, the tax collector is without legal authority to vary from the adopted assessment schedule in collecting such taxes on any specific motor vehicle.

Any taxpayer dissatisfied with any portion of the assessment schedule directly affecting him may pay the resulting tax under protest, at time of payment, and sue for recovery of all or any portion of the tax paid. This recourse is available, however, only to the taxpayer who filed objection and adjustment claim to the proposed assessment during the time set for filing such objection, as provided hereinabove, excepting in cases where the cause for such protest originated subsequent to the date for filing such objection.

SOURCES: Laws, 1958, ch. 588, § 20.

§ 10007-21. Exemptions and credits—penalty for violation of section.

Beginning with the taxes due on the 1958 regular assessment, all motor vehicles, as defined in this act, while in the hands of bona fide dealers as merchandise and which are not being operated upon the highways of this state shall be exempt from all ad valorem taxes.

All motor vehicles belonging to the Federal Government or the State of Mississippi or any agencies or instrumentalities thereof shall be exempt from all ad valorem taxes.

All motor vehicles operated in this state as common and/or contract carriers of passengers when such carriers are required by law to obtain a certificate of public convenience and necessity from the Mississippi Public Service Commission, and on which such common and/or contract

carriers of passengers there is levied a privilege license tax of three per cent (3%) of the gross revenue derived from the operations of such carriers within the state as provided by section 9352-04, Mississippi Code of 1942, shall be exempt from the ad valorem taxes authorized by this act.

Exemption from ad valorem taxes on any motor vehicle under the provisions of sections 9697 through section 9713, Mississippi Code of 1942, as amended, may be effective for only that portion of the taxable year during which the exemption conditions or requirements of said code sections as to ownership and/or use are applicable to such motor vehicles.

Any claim for tax exemption by authority of the abovementioned code sections or by any other legal authority, shall be set out in the application for the road and bridge privilege license, and the specific legal authority for such tax exemption claim shall be cited in said application, and such authority cited shall be shown by the tax collector on the tax receipt as his authority for not collecting such ad valorem taxes, and the tax collector shall carry forward such information in his tax collection reports.

Any motor vehicle driven over the highways of this state to the extent that the owner of such motor vehicle is required to purchase a road and bridge privilege license in this state, yet the legal situs of such motor vehicle is located in another state, shall be exempt from ad valorem taxes authorized by this act.

If a taxpayer shall sell or trade a motor vehicle, on which the ad valorem and road and bridge privilege taxes have been paid in any county in the state, to a regular automobile dealer and shall receive in trade or shall purchase another motor vehicle during the same taxable year,

then the taxes already paid for the remaining portion of the taxable year on the trade-in motor vehicle shall be credited on the taxes due on any such replacement motor vehicle, if the license plate issued for the trade-in motor vehicle is surrendered to the tax collector.

If the said license plate was issued in another county in the state, then the corresponding privilege license and ad valorem tax receipt must also be surrendered as evidence of the amount of taxes paid.

Credit shall also be allowed in the same proportion, as outlined above, on the road and bridge privilege taxes for the remaining portion of the year. No credit, however, shall be allowed on the charge made for the license plate. Such license plates surrendered to the tax collector shall be retained by him, and in no event shall such license plate be attached to any motor vehicle after being surrendered to the tax collector, nor shall any license plate be transferred from one motor vehicle to any other motor vehicle.

Any person found violating any of the provisions of this section shall be arrested and tried, and if found guilty shall be fined in an amount double the total amount of taxes involved.

SOURCES: Laws, 1958, ch. 588, § 21.

§ 10007-22. Highway Safety Patrol and other peace officers to check for violations of Act—arrests and fines—penalty for unauthorized delay in payment of taxes.

It shall be the duty of members of the Mississippi Highway Safety Patrol or any other peace officer, when investigating any traffic violation, wreck, or routine check involving any motor vehicle, to obtain all information necessary in determining whether or not the provisions of this

act have been complied with in all substantial respect with reference to such motor vehicles so involved. It shall also be the duty of all peace officers, including members of the said highway safety patrol, to investigate any alleged violation of this act reported to them and to proceed according to law.

On and after the effective date of this act any person operating a motor vehicle upon the public highways of this state who has not complied with the provisions of this act shall be arrested by any officer authorized to make arrests, and tried, and, if convicted, shall be guilty of a misdemeanor for each separate offense and shall be fined as now provided by law, and each such illegal operation of a motor vehicle upon the public highways of this state shall constitute a separate offense.

A penalty of ten per cent (10%) of the ad valorem taxes due shall be assessed against the taxpayer for the first fifteen (15) days of delinquency, or any part thereof, in all cases where there is an unauthorized delay in the payment of the ad valorem taxes due on any motor vehicle which is liable for such a tax, under the provisions of this act, and such penalty shall be increased to twenty-five per cent (25%) for a delinquent period in excess of fifteen (15) days. The penalty shall be collected by the sheriff and delivered to the taxing district involved. The sheriff shall not be entitled to any portion of this penalty other than his usual fee for collecting taxes as provided in section 3936, Mississippi Code of 1942, recompiled, as amended, except that he shall not be entitled to any percentage for alleged collection of the tax and penalty by distraint.

SOURCES: Laws, 1958, ch. 588, § 22; 1959, Ex., ch. 23.

§ 10007-23. Constitutionality.

If for any reason, any section, paragraph, provision, clause or part of this Act shall be held unconstitutional or invalid, that fact shall not affect or destroy any other section, paragraph, provision, clause or part of this Act not in and of itself invalid, but the remaining portion thereof shall be in force without regard to that so invalidated. [Supersedes former § 10007-23.]

SOURCES: Laws, 1958, ch. 588, § 23; 1960, ch. 413, § 11.

§ 10007-24. Tax Commission may postpone time for preparing assessment schedule.

For any year, the Tax Commission is hereby authorized, in its discretion, to pass an order postponing for not more than thirty (30) days the time for preparation of the assessment schedule herein referred to, the time for forwarding the same to the presidents of the various boards of supervisors and mayors or other presiding officers of the various municipalities, the time for the consideration of the same and the subsequent time for adoption and publication by these respective boards, and the time for filing objection to the same by any affected motor vehicle owner. In cases where any municipality elects to prepare its own independent schedule, such postponement shall also apply to its acts and duties.

Such postponement order shall be made of minute record by the Tax Commission and a certified copy shall be furnished the presiding officers of the various counties and municipalities and such order shall be binding on all counties and municipalities.

SOURCES: Laws, 1958, ch. 588, § 24; 1960, ch. 413, § 9.

§ 10007-25. Rules and regulations.

The state tax commission shall adopt and issue rules and regulations, not inconsistent with this act, as to the duties of all officials, boards and officers in the administration of this law, and such other rules and regulations not inconsistent with this act, as the tax commission shall deem necessary. Such rules and regulations shall be observed by such officials, boards and officers in all respects and in the performance of any and all duties imposed and powers granted by this act.

SOURCES: Laws, 1958, ch. 588, § 25.

§ 10007-26. Motor vehicle ad valorem taxes not collectible, except as provided in Act.

No ad valorem taxes on motor vehicles, as defined in this Act, excepting that provided for by this Act, shall be assessed, levied or collected.

SOURCES: Laws, 1958, ch. 588, § 26; 1960, ch. 413, § 10.

APPENDIX B

§ 10007-51. Purpose of Act.

The purpose of this act is, with reference to assessing and collecting ad valorem taxes on house trailers, to (a) fix the taxable year, (b) fix the lien date, (c) determine the method of assessing, (d) fix the dates for assessing such taxes, (e) prescribe the method of collecting such taxes, and (f) to fix the dates for collecting such taxes.

SOURCES: Laws, 1962, ch. 535, § 1.

§ 10007-52. Definitions.

The subject words and terms of this section, for the purposes of this act, shall have meanings as follows:

(a) The term "house trailer" shall mean and include any trailer-type vehicle or mobile home, designed and constructed so as to be suitable for use for domestic, commercial, or industrial purposes, and which is constructed so that it may be moved from place to place over the highways and streets by being supported by two (2) or more wheels, and drawn or moved by motive power not its own, and which house trailer is not taxed under authority of chapter 588, laws of 1958 [§§ 10007-01 et seq.].

(b) The term "person" shall mean any natural person, agency, firm, copartnership, corporation, joint stock, or other association or organization.

SOURCES: Laws, 1962, ch. 535, § 2.

§ 10007-53. Registration fee—report and payment—proration of tax.

Any person owning, occupying, using, or having in his possession or control a house trailer shall, not later than the last day of November each year, register such house trailer with the sheriff of the county in which it is located on such date. At the time such registration is made, and before a registration certificate and label may be issued, the said owner, occupant, user, possessor, or controller of said house trailer shall pay a registration fee of two dollars and fifty cents ($2.50) together with all ad valorem taxes due on said house trailer for the then fiscal year. Fifty cents (50¢) of this fee shall be retained by the sheriff, one dollar ($1.00) shall be paid into the general county fund, and one dollar ($1.00) of this fee shall be forwarded to the tax commission to cover cost of labels, tax receipt forms, etc., as hereinafter provided.

Such payment to the tax commission shall be made on or before the twentieth day of each month for taxes collected during the preceding month. This payment shall be forwarded to the tax commission along with a report showing the following information of all taxes collected: name of owner, length of trailer, serial number of trailer, assessed value, taxing district, total taxes collected, and total registration fee. This report may be made up on the same form used for reporting ad valorem taxes on other motor vehicles.

If a person purchases a house trailer at any time during the fiscal year, then the ad valorem taxes shall be prorated for the remaining portion of the fiscal year. The first day of any month shall be the tax lien date for any such vehicle purchased at any time during said month. The registration fee shall not be subject to proration.

SOURCES: Laws, 1962, ch. 535, § 3.

§ 10007-54. Taxable and fiscal year—tax lien date—trailer brought into state.

For the purpose of this act the taxable and fiscal year shall commence each year on November first and shall end on October thirty-first of the following calendar year. The tax lien date shall also be November first for a house trailer owned on that date.

The date of purchase of a house trailer during the fiscal year shall constitute the tax lien date for such vehicle and the ad valorem taxes will be calculated on a pro rata basis.

A person bringing such a house trailer into this state, on which the taxes have already been paid in another state, shall be allowed thirty (30) days in which to pay the tax in this state.

SOURCES: Laws, 1962, ch. 535, § 4.

§ 10007-55. Sheriff's fees.

For his services in collecting the registration fees and ad valorem taxes authorized by this act, the sheriff shall be allowed the same fees as he is allowed by section 15, chapter 588, laws of 1958 [§ 10007-15], excepting that he shall be allowed to retain fifty cents (50¢) of the registration fee.

In posting his cash book the sheriff shall follow the same procedure set out in section 13, chapter 588, laws of 1958 [§ 10007-13].

SOURCES: Laws, 1962, ch. 535, § 5.

§ 10007-56. Information to be furnished to sheriff—registration label and tax receipt.

The person registering the said vehicle shall do so by furnishing to the sheriff the name of the person occupying said vehicle, address, taxing situs, make and year model vehicle, serial number, length and width of vehicle.

Upon furnishing the above information, and payment of the registration fee and ad valorem taxes due, the sheriff shall issue a registration label together with a tax receipt showing the total amount of taxes and fee paid. The tax receipt number so issued shall bear the same number as that shown on the registration label.

SOURCES: Laws, 1962, ch. 535, § 6.

§ 10007-57. Assessed value of house trailer—collection and assessment of municipal taxes—exceptions to assessment schedule.

The assessed value of house trailers as set out in the assessment schedule provided for by chapter 588, laws of 1958 [§§ 10007-01 et seq.], as amended, shall be used by the

sheriff in assessing and collecting ad valorem taxes on said house trailers.

In no instance may any taxing agency, under authority of this act, either reduce or increase for purposes of ad valorem taxation the assessed value of any such house trailer, from that shown by the aforesaid assessment schedule.

In all cases where a sheriff has been previously authorized to collect motor vehicle ad valorem taxes for any municipality in his county, as provided for by chapter 588, laws of 1958 [§§ 10007-01 et seq.], such authorization shall also include the collection of such municipality's ad valorem taxes on house trailers as authorized by this act.

This act shall not apply to the assessment and collection of municipal taxes excepting in those cases where the sheriff has been or will be authorized to assess and collect such taxes. Such authorization shall be made according to the provisions set out in said chapter 588, laws of 1958 [§§ 10007-01 et seq.].

Any person objecting to the assessment schedule as it affects the assessed value of his house trailer may proceed as is provided for under section 12, chapter 588, laws of 1958 [§ 10007-12].

SOURCES: Laws, 1962, ch. 535, § 7.

§ 10007-58. Exemptions.

(a) House trailers which are already taxed under authority of Chapter 588, Laws of 1958 [§§ 10007-01 et seq.], are exempt from the taxes authorized by this act.

(b) A house trailer located on land which is owned by the same person owning and occupying the said house trailer shall also be exempt from the taxes authorized by

this act, if the wheels of said house trailer have been detached and the trailer is placed on a conventional type foundation. Such trailers shall be assessed and taxed along with the land as other property is assessed and taxed.

(c) If any vehicle defined in this act is used or is to be used upon the streets and highways of this State after the tax, as set out in this act, has been paid, then the sheriff shall exempt such vehicle from further ad valorem taxes for the remaining portion of the current fiscal year in issuing a road and bridge privilege license for such vehicle.

(d) On and after passage of this act all such house trailers owned by and/or in the possession of a dealer as merchandise shall also be exempt from taxes under this act, and the governing authorities of any county or municipality are hereby directed to have the assessed value of such property stricken from the assessment rolls.

SOURCES: Laws, 1962, ch. 535, § 8; 1964, ch. 526.

§ 10007-59. Trailer court operator required to keep register.

Each operator of a trailer court shall at all times keep an accurate and complete register of each trailer located on such court. This register shall show the name of the person occupying or in charge of the trailer, the length of the trailer, its serial number, and the date such trailer was placed in the court.

Failure on the part of the operator of a trailer court to comply with the provisions of this section may result in the revocation of such operator's license to operate such court.

SOURCES: Laws, 1962, ch. 535, § 9.

§ 10007-60. Lien of county and municipality—due date—collection of delinquent taxes—seizure and sale.

The taxes authorized by this act shall become a bona fide lien of the county and municipality against each subject house trailer or mobile home until paid and satisfied in full, and all delinquent taxes may be collected as hereinafter provided.

The taxes assessed and levied under authority of this act shall become due and payable on or before November first and if any taxes due and owing by any owner of a house trailer or mobile home described in section 1 of this act [§ 10007-51] have not been paid within thirty (30) days, then the tax collector of any county or municipality shall on or before the fifteenth day of the following month send a notice to the owner of such trailer by certified mail at his last known address advising said owner of the amount of taxes due and that lien in favor of the political subdivision exists against said trailer.

If the taxes due are not paid in full by the first day of the following month then the tax collector of the county or municipality shall publish for the next two (2) consecutive weeks in a newspaper published in the county, a list of the trailer owners and the serial number and model number or most appropriate legal description of each trailer and the amount of taxes due on each trailer. The published notice shall contain a day certain when the trailers shall be sold for taxes due thereon but said date shall not be sooner than one week nor later than four (4) weeks after the final publication thereof.

On or before the date fixed in the notice for such sale, if there remain any taxes due on any house trailer or mobile home, the tax collector of the county or municipality shall seize said vehicle and proceed to sell the same for

cash to the highest bidder at public outcry at the appropriate courthouse of the county or city hall, as the case may be. Provided, however, there shall be added to the taxes due, twenty-five per cent (25%) damages, interest at the rate of one-half per cent (½%) per month from the date such taxes were due, plus all publication costs.

In the event there are no sales for a trailer or trailers on the first published date, then the tax collector may continue the sale from day to day until all sales are final without further or additional notice to the trailer owner or by publishing a notice.

The proceeds of every sale made under authority of this section in excess of the taxes, interest, damages and publication costs, shall be held by the tax collector for a period of six (6) months from the date of such sale, if not reclaimed by the trailer owner prior to the expiration of said six (6) months' period, and if not reclaimed within said period such residue shall escheat to the county and shall be paid over forthwith to the chancery clerk to be deposited into the general fund of the county in which said sale is made.

Any house trailer or mobile home sold under authority of this act for unpaid taxes thereon shall be sold by the sheriff as other personal property is sold for delinquent taxes, and the proceeds derived therefrom shall be paid by the sheriff to the proper fund as he presently pays monies collected on other personal property under distress proceedings for taxes.

SOURCES: Laws, 1962, ch. 535, § 10.

§ 10007-61. Power and duties of state tax commission.

The state tax commission shall adopt and issue rules and regulations, not inconsistent with this act, as to the

duties of all officials, boards and officers in the administration of this law, and such other rules and regulations not inconsistent with this act, as the tax commission shall deem necessary. Such rules and regulations shall be observed by such officials, boards and officers in all respects and in the performance of any and all duties imposed and powers granted by this act.

The tax commission shall also prescribe and furnish labels, tax receipt books and other forms necessary for the proper administration of this act.

The tax commission shall also prescribe the method and place of attaching the label to the vehicle.

SOURCES: Laws, 1962, ch. 535, § 11.

§ 10007-62. Material misstatement of facts penalized.

Any material misstatement of facts by the property owner or his agent in the administration of this act shall constitute a misdemeanor and upon conviction the offending person shall be punished according to law.

SOURCES: Laws, 1962, ch. 535, § 12.

§ 10007-63. Determination of total assessed value of county.

Only the assessed value of all house trailers on which taxes were paid for the first three (3) months of the fiscal year shall be added to the assessed value of other property of the county in determining the total assessed value of a county for classification purposes.

SOURCES: Laws, 1962, ch. 535, § 13.

§ 10007-64. Constitutionality.

If for any reason, any section, paragraph, provision, clause or part of this act be held unconstitutional or in-

valid by a court of competent jurisdiction, such unconstitutionality or invalidity shall not affect the remaining portions of this act, but the remaining portion thereof shall be in full force and effect without regard to the findings of said court or courts.

SOURCES: Laws, 1962, ch. 535, § 14.

§ 10007-65. Effective date.

This act shall take effect and be in force from and after November 1, 1962 (approved June 1, 1962).

SOURCES: Laws, 1962, ch. 535, § 15.

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1965

No. 16

SGT. JESSE E. SNAPP,

Petitioner,

versus

HONORABLE W. D. NEAL, State Auditor, and
HONORABLE JOE T. PATTERSON,
Attorney General,
both of the State of Mississippi.

Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI

REPLY BRIEF FOR PETITIONER, SGT. JESSE E. SNAPP

The original Brief for Petitioner, Sergeant Jesse E. Snapp, was filed with the Clerk of the Court, United States Supreme Court, on August 23, 1965. On September 22, 1965, the Honorable Joe T. Patterson, Attorney General for the State of Mississippi, filed a Brief for Respondents, W. D. Neal, former State Auditor and Joe T. Patterson, Attorney General. The purpose of this Reply Brief is to clarify issues raised by the Respondents' Brief, referred to above.

A. The Respondents' reference to the "Petitioner's statement concerning non-movement of the trailer on the highways on any date pertinent to this case is not supported by the record; . . . and speculation as to whether it did or did not use the highways" is unwarranted and contrary to the factual evidence. (p. 3, Brief for Respondents)

1. Petitioner's affidavit (R. 14), which was considered by the Court below and accepted by the Respondents as a fair recital of the issues, states under oath that the trailer has "at all times since November 1, 1962 been parked at Sojourner's Trailer Court, 252 Cayuga Street, Crystal Springs, Copiah County, Mississippi" (R. 14).

2. In a supplemental affidavit of the petitioner given under oath on March 13, 1963, the following appears: (R. 25)

> "I purchased my house trailer from Southern Trailer Sales Company, Greenville, Mississippi, on May 16, 1959, for $5330.00. Mississippi State Sales Tax was paid when purchased. The sales agency moved my trailer for me over a Mississippi highway to a point a few miles outside of Greenville, Mississippi.
>
> "The trailer remained at that location until October 1961, when I was transferred to Crystal Springs Air Force Station in October 1961. The trailer was transported from Greenville, Mississippi, to Crystal Springs, Mississippi, over Mississippi Highways by Transit Homes, Inc. *It has not been on a Mississippi*

highway since that time." (Emphasis supplied)

3. The operative facts of the case are those which existed at the time the application for refund was made, i.e., February 4, 1963 (R. 16) and hence there is no speculation as to whether it did or did not use the highways, as the record of the proceedings below, which has been admitted by the respondents as being "substantially correct", is crystal clear on this point.

B. In Point IV, respondents seem to take the position that petitioner is estopped, as it were, from now claiming that the vehicle in question is not a motor vehicle within the terms of §574. Respondents base this contention on a sworn statement of petitioner which reads as follows: (See para. IV of petitioner's application for refund, R. 13; and oath thereto, R. 16)

> "The trailer is a 'house trailer' as defined by §2(a) of said House Bill, No. 747, and is not and never has been registered or taxed under authority of Chapter 588, Laws of 1958 of Mississippi."

It is submitted that in no way can this language be construed as a statement that the "trailer" was a motor vehicle. What petitioner said was that it was a house trailer, and that he had not paid any tax under the Motor Vehicle Ad Valorem Property Tax Act, to wit: §10007-02 et seq., Ch. 588, Laws of 1958.

C. Throughout Respondents' brief three cardinal errors are made:

1. Respondents treat the case as though the tax involved was imposed by the Motor Vehicle Ad Valorem Tax Act of 1958. In fact all parts of the record show that the tax was demanded and paid under, and only under, the provisions of the House Trailer Ad Valorem Tax Act of 1962. The error is serious, because the House Trailer Act does not contain an exemption as does the Motor Vehicle Act. (See §10007-21) Respondents concede this fact at p. 17 of their brief.

2. Respondents furthermore contend, for the first time in this litigation, that petitioner could have registered his trailer under §9352-09(b) which is a 1956 amendment.[1] This amendment reads as follows:

> "In cases where a trailer or semi-trailer transporting property is used with and drawn by a private carrier of passengers, there is hereby levied an annual privilege tax upon such trailer or semi-trailer of one dollar ($1.00); provided however that there is hereby levied an annual privilege tax upon each house trailer or house semi-trailer of ten dollars ($10.00)."

But even if petitioner could have registered under §9352-09(b) there is no showing that this would have relieved him of the ad valorem tax imposed under §10007-53 of the House Trailer Act. In fact it can be argued that since §10007-53 provides for a registration

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[1] §9352-09 is included in Chapter 4, entitled "Motor Vehicles" of Title 37, entitled "Privilege and Excise Taxes", Volume 7, Mississippi Code, 1942, Recompiled. §§10007-01 through 27 is Division 15, Motor Vehicle Ad Valorem Tax Act, of Title 39 (Revenue — Ad Valorem). §§10007-53 through 65 is Division 16, House Trailer Ad Valorem Tax Act, of Title 39.

fee of $2.50, whereas §9352-09(b) provides for one of $10.00, that the former, being the later law, impliedly repealed the latter. In any case, the tax involved in *this* case is the ad valorem tax imposed by §10007-53 and not the registration fee imposed by §9352-09(b). Even if petitioner had paid the registration fee imposed by §9352-09(b), he would still have had to pay the ad valorem tax imposed in this case, for there is nothing to show that payment of the tax imposed by §9352-09(b) would relieve him of the ad valorem tax, imposed and exacted under §10007-53.

3. Respondents' position that petitioner's property was a motor vehicle and not a house trailer is in conflict with the official position taken by the taxing authority in this case. Thus, the initial step of the sheriff in demanding payment (R. 16-17) was a demand *specifically* under the House Trailer Act of 1962 and *not* under the Motor Vehicle Act of 1958. The Supreme Court of Mississippi also treated the tax as one under the House Trailer Act. (R. 46). The two acts may be in "pari materia", but they contain some different ideas — the most important of which is the omission in the House Trailer Act of the exemption contained in §10007-21 of the Motor Vehicle Act. In fact, what respondents are saying, is that if petitioner had paid *only* the registration fee under the House Trailer Act of 1962, he would have become exempt from the ad valorem tax of the House Trailer Act of 1962 because of a provision for exemption contained in a cognate, but, in fact, entirely different Act, to wit: §10007-21 of the Motor Vehicle Act of 1958. There is nothing stated to support the proposition that any exemption from the ad valorem taxes imposed by the House Trailer Act of 1962 would thus occur. In fact, §10007-53 of that

Act makes it clear that there can be no registration without prior payment of the ad valorem tax. Petitioner challenges respondents to demonstrate how and why petitioner would have been exempt from the House Trailer Ad Valorem tax imposed by §10007-53 by paying *only* the registration fee of $2.50 under §10007-53 or of $10.00 under §9352-09(b).

Thus, Mississippi itself characterized this proceeding and the tax involved, when it originally made the assessment under the House Trailer Act of 1962 and persisted throughout in treating it as such a tax — and *not* a tax under the Motor Vehicle Act of 1958. Mississippi *did not* assess under the Motor Vehicle Act of 1958, and it is suggested that it did not do so, but chose to assess under the House Trailer Act of 1962, because, if the assessment had been made under the Motor Vehicle Act of 1958, the exemption would have come into operation immediately. (See §10007-21). On the other hand, if it were assessed under the House Trailer Act of 1962, no exemption under state law would be operative.

CONCLUSION

For the reasons stated herein and in petitioner's original brief, it is respectfully submitted that the judgment of the Supreme Court of Mississippi should be reversed.

Respectfully submitted,

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CERTIFICATE

It is hereby certified that service of the foregoing brief has this _____ day of October, 1965, been made on counsel for the Respondents by depositing a copy thereof, postage prepaid, in the United States mails, properly addressed to him as follows:

Honorable Joe T. Patterson
Attorney General of the
State of Mississippi
Jackson 5, Mississippi

Counsel for Petitioner

SUPREME COURT OF THE UNITED STATES

No. 16.—October Term, 1965.

Sergeant Jesse E. Snapp, Petitioner, *v.* Honorable W. D. Neal, State Auditor, et al.	On Writ of Certiorari to the Supreme Court of the State of Mississippi.

[January 18, 1966.]

Mr. Justice Brennan delivered the opinion of the Court.

This is a companion case to *California* v. *Buzard, ante,* No. 40, decided today. The State of Mississippi levied an ad valorem tax against a house trailer of the petitioner, Sergeant Jesse E. Snapp. Sergeant Snapp was stationed under military orders at Crystal Springs Air Force Base, Mississippi. He bought the trailer in Mississippi and moved it on Mississippi highways to a private trailer park near the Air Force Base where he placed it on movable concrete blocks and used it as a home. He did not register or license the trailer, or pay any taxes on it in his home State of South Carolina. He challenged the Mississippi tax as a tax on his personal property prohibited by the Soldiers' and Sailors' Civil Relief Act of 1940, as amended in 1944, § 514, 50 U. S. C., App. § 574.* The Mississippi Supreme Court sustained the levy on the ground that, as applied to motor vehicles, § 514 (2)(b) conditions the nonresident serviceman's immunity from its ad valorem tax on the serviceman's prior payment of the fees imposed by his home State. The court reasoned that § 514 (2)(b), "[b]y stip-

*The relevant text of the statute is in *California* v. *Buzard, ante,* n. 1.

ulat[es] expressly that the taxation should not be limited to privilege and excise taxes, it necessarily follows that the prohibited tax must include the only other general branch of taxation, that is, ad valorem. It is emphasized that the federal statute is meant to include ad valorem taxes as being one of the taxes for which the serviceman is *immune, provided he complies with the laws of his home State concerning registration of the motor vehicle.* If he fails to so comply, as was done in this case at bar, he is no longer entitled to the protection of the Act of Congress." 250 Miss. 597, at 614–615, 164 So. 2d 752, at 760. We granted certiorari, 380 U. S. 931. We reverse on the authority of our holding today in *Buzard* that the failure to pay the motor vehicle "license, fee, or excise" of the home State entitles the host State only to exact motor vehicle taxes qualifying as "licenses, fees, or excises"; the ad valorem tax, as the Mississippi Supreme Court acknowledged, is not such an exaction. We thus have no occasion to decide whether the Mississippi Supreme Court was correct in holding that the house trailer was a "motor vehicle" within the meaning of § 514 (2)(b).

Reversed.